UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - X
: 99-CV-7392ROBERT A. FALISE; LOUIS KLEIN, (JBW)
JR.; FRANK MACCHIAROLA; and :CHRISTIAN E. MARKEY, JR.,
AS TRUSTEES, :
Plaintiffs, : United States Courthouse
-against- Brooklyn, New York
:THE AMERICAN TOBACCO COMPANY;
R. J. REYNOLDS TOBACCO COMPANY; :B.A.T. INDUSTRIES, PLC; BROWN & January 8, 2001
WILLIAMSON TOBACCO CORPORATION; : 9:00 a.m.PHILIP MORRIS INCORPORATED;
LIGGETT GROUP, INC.; and :LORILLARD TOBACCO COMPANY,
: Defendants.
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TRANSCRIPT OF JURY TRIAL BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE
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16 Transcript produced by CAT.
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1
2 (Open court.)
3 THE COURT: Good morning everyone. We have the new
4 proposals with respect to the charge based on last week's
5 work.
6 I think our next exhibit is 54, isn't it? Court
7 Exhibit 54 will be the plaintiffs' proposals -- I'll call them
8 plaintiffs's new proposals --
9 MR. STENGEL: Excuse me, your Honor. I show 55 as
10 the defendants' proposal from the last round, so we may be at
11 56 now, I'm not sure.
12 THE COURT: 55? This would be 56?
13 MR. STENGEL: I think that's correct, your Honor.
14 THE COURT: All right. Make it 56. I don't have it
15 in my book, but that's all right.
16 The defendants' new proposals will be Court Exhibit
17 57. We're not going to deal with them now. We have a number
18 of other motions that are more pressing. As a matter of fact,
19 we may have to work tonight.
20 The first motion is the plaintiffs' motion to

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preclude testimony of Dr. Frederick Dunbar regarding the alleged effects of historical factors on TDP full liquidated values. I'll hear you.

MR. STENGEL: Your Honor, there are a number of grounds for the motion.

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Primarily, in light of this court's ruling on Friday that the Trust could seek to recover only the 10 percent actually paid, we are concerned that presentations that focus on the very large numbers of all payments prior to the initiation of TDP with what, in our in view at least, is a demonstrable lack of value of the TDP values would be prejudicial and misleading to the jury.

We're talking about numbers of dramatically different orders of magnitude now, and to the extent Professor Dunbar is allowed to talk in terms of billions of dollars using full liquidated values, it will have the effect of dwarfing the damage claims now asserted by the Trust based on the actual payments made.

There are actually two challenges to Professor Dunbar's testimony through the prior filed motion, which took issue with sort of the essential core of his premium allegation, which is, as your Honor may recall from the Daubert hearing, an assumption that the Trust started business with a target of 20 percent market share for the Manville Share.

Professor Dunbar takes by simple extrapolation his own calculation in the pre-TDP area of, I believe it's 36.9 percent, to say, voila, there is a substantial premium being paid. We don't think that is supportable.

Your Honor, as a matter of fact, recognized during

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the Daubert hearing in colloquy with counsel and Professor Dunbar that no one knew what those market share percentages were going to be when the Trust opened its doors, and what Professor Dunbar was doing was involving himself in an exercise of speculation.

In a sense, the premium that Professor Dunbar attempts to extrapolate into the TDP with the minor compensation of punitive damages, which are calculated by virtue of another questionable equally specious extrapolation, the core argument that there is a premium built into the TDP flows, at least in Professor Dunbar's mind, from the fact that the Trust should have been getting 20 percent market share, it didn't, so the value of that 19 percent, approximately, which multiplied by full claim values is in the billions of dollars, is a premium he believes should be subtracted from anything that the Trust might be entitled to recover.

So both under competence grounds, the fact that it is speculative inherently and the fact that, in light of the court's ruling on the 10 percent payment level, any reference by defense experts that focus on full liquidated values will tend to disproportionately suggest or disproportionately weigh their arguments as to premium or waste, we believe that Professor Dunbar should not be allowed, in the first instance, to predicate an argument of premiums based on a 20 percent assumed market share, and when he talks about whatever he's

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going to talk about in the context of TDP, he should be restricted to talking about actual paid 10 percent values

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rather than full liquidated values.
If those are the rules that apply to us by way of recovery, they ought to apply equally to the defendants.
MR. BERNICK: Your Honor, this is really largely treading old ground. If I can draw on the chart here for a moment?
The 20 percent market share issue was specifically taken up this court in connection with the Daubert hearing --
THE COURT: I'm going to allow the testimony on 20 percent. I don't think it's accurate and, if necessary, you'll just have to take care of it on rebuttal.
It is an issue, it seems to me, completely contrary to everything I know about the asbestos litigation, but I will allow the defendants to put it in.
MR. BERNICK: Fine.
THE COURT: It doesn't seem to me to be an argument that is a winner from their point of view of.
This motion is denied for the reasons stated on the record.
The next motion is from plaintiffs to preclude the defendant from offering evidence of communications between Judge Harold Tyler and the court. I don't want any argument on it. It's precluded.
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MR. BERNICK: We have withdrawn that portion of the deposition. We apologize to the court.
THE COURT: Motion granted.
I have now the plaintiffs' motion for reconsideration of the court's ruling limiting plaintiffs' recovery to the 10 percent paid under the TDP.
I will hear you, if you would like to be heard.
MR. STENGEL: Thank you, your Honor.
On Friday the court ruled that we were entitled only to recover the 10 percent actually paid by the Trust under the TDP. In our view, that was a dramatic shift away from prior rulings of the court where, I think, the court had recognized that the Trust's entitlement to 100 percent of liquidated value was an issue that would go to the jury; it was, a matter of fact, a question of fact.
The court's only stated ground for the ruling was fairness and, with respect, the Trust's view is fairness, while important to these proceedings and, in fact, a driving force behind the litigation from our perspective itself, must take into account the rights and interests of the Trust beneficiaries.
THE COURT: Well, I don't think so. I think that is basic problem. I think the beneficiaries have cause to complain, but I don't see how the Trust has cause to complain. It's not going to be paying any more.
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I understand the point. It is troublesome. I think you'll have to take it up, should you get a recovery on your compensatory claims in connection with the punitive damages. It could be a factor there.
MR. STENGEL: Thank you, your Honor.
THE COURT: Motion denied for reasons stated on the record.
I have the plaintiffs' motion to preclude defendants from presenting the deposition designations of David Austern. I don't want anything that's already in.
MR. BERNICK: We actually gave them a new package

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last night. There is some overlap. The problem is that on cross-examination, obviously, all your dealing with is snippets of the testimony --

THE COURT: I will allow it. If you want to have a little more to give it some meaning, I will allow that, too, but you're not going to be precluded from putting in testimony.

MR. BERNICK: It's a short package from Mr. Austern, very short.

THE COURT: Motion denied.

If there's something the plaintiffs want to put in, designate with respect to that, why, do so. Again, if you have a little surrounding material that will give it some color, you're free to do so.

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I have, in connection with the plaintiffs' markup of the discussion last Friday, a series of arguments designed to change the court's view. I think they have a good deal of weight, but I don't want to go over it this way.

What I want to do is move forward and get a complete charge based upon the decisions that I made and then, when we get that, polish it and, to the extent that we can, we can go back and take up some of these matters, but I don't want to rehash what I did Friday at this stage. We'll get to it as soon as I get to the charge.

I say we may have to stay late tonight just so we can move ahead with it because mornings are difficult in view of my other motions and these whole series of motions I have to decide as the case moves forward.

MR. BERNICK: A very short matter. What I am going to raise will come up probably this morning following the testimony of Mr. Martin, whose testimony will continue.

Remember, he was the witness who whose testimony was suspended while we could do another witness? After him we have a couple of depositions to read. These are the depositions that were taken pursuant to the conversation that we had with the court about those two people in Louisville, who had very, very specific matters to cover.

Their depositions were taken last week. We provided designations to the other side and we received our counter

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designations last night.

I have agreed to incorporate almost the entirety of all their counter designations to both of those depositions. There's only really one exception, and that is with respect to the secretary.

Remember Mr. Wigand had a list of files? We went and took the deposition of the secretary. Their designations include testimony regarding not the destruction of those files, but also the fact that after Wigand left, apparently she transmitted some documents to Dr. Wigand after he left.

It doesn't really have anything to do with the question of --

THE COURT: Let me hear why you want it.

MR. STENGEL: I suggested -- it's a page of testimony -- it might be quicker and simpler if we can beg your Honor's indulgence to read the testimony.

I think it goes to the quality and accuracy of her recollection of what happened with these files.

THE COURT: Read it.

MR. BERNICK: What?

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THE COURT: Read it. What is it that they want?
MR. BERNICK: Well, here's what:
"Do you happen to know, Ms. Thomas, if you took custody of Dr. Wigand's files and began your archiving process before or after Mr. Grasch and Bullis obtained some of his
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files?
"ANSWER: Probably before.
"QUESTION: Do you have a specific recollection of that or are you just assuming?
"I'm assuming that."
So it's testimony --
THE COURT: I will allow it. Let's have it.
MR. BERNICK: I'm sorry?
THE COURT: It's surrounding and applies to her veracity. Let's have it. Plaintiffs' designations will stand.
MR. KRAUS: A brief application. In light of the dismissal of B.A.T., I think it would be appropriate to advise the jury that B.A.T. has been dismissed from the lawsuit.
THE COURT: Yes. Write something out. I normally do it in my way, but write it out and let's see what you want.
Was there something else that the defendants were going to write out for me?
MR. BERNICK: There's nothing additional to that.
MR. WAGNER: Can I hand up to the court the documents that we used with Professor Viscusi?
At tab 8, your Honor, is an article I thought you requested during the examination. That is for your benefit, for the court's benefit.
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THE COURT: This is for me?
MR. LOMBARDI: Yes. That is the court's copy. I have given a copy to plaintiffs' counsel. These are the documents that we used with Viscusi. The excerpts are attached because we had used some --
THE COURT: Mark this Court Exhibit 58. I take it this is generally for my edification? Put it on my desk. I can read these during my sleepless nights.
MR. SCHROEDER: Can I hand up a copy of a motion with respect to Dr. Mendelsohn, who may begin her testimony as early as this afternoon? We can address it over lunch, if you would like.
THE COURT: Where is the list of documents? Do the defendants have a list of documents?
MR. BERNICK: The full list of documents that have been offered and received by the court?
THE COURT: Was there a list of documents on cross-examination or on direct? Do we have all the lists of documents on both sides?
MR. BERNICK: You're talking about with respect to Professor Viscusi?
THE COURT: Anybody.
MR. BERNICK: We gave your Honor the full list of documents.
THE COURT: If you gave them to me and they are
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agreed on and marked, they have been given to the reporter and introduced into the record.

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Is there anything else of that nature or are we up to date on all of these?
MR. WAGNER: The list with Viscusi needs to be read into the record.
THE COURT: Where is it?
MR. WAGNER: That is the one I just handed your Honor.
THE COURT: All right. Attached to that is 1 to 8. Is that only for me, 1 to 8?
MR. WAGNER: Yes. We have a copy we'll put into the notebooks, but the covering memo divides up which demonstratives we actually used.
THE COURT: This needs to be put into the record?
MR. WAGNER: Right. The covering piece of paper need to be read into the record.
THE COURT: Put on my desk the attachments which will be marked Court Exhibit 58 A for the judge. Background. Take judicial notice in case a Daubert matters should come up.
Court Exhibit 58 shows Viscusi's demonstratives. Is there any objection to that?
MR. BICKS: There is no objection, your Honor, provided that, I just got that list and I want to check it,
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but --
THE COURT: Subject to checking. I am handing Court Exhibit 58 to the court reporter, who will enter all the numbers listed in the case of GC 300001. Only the highlighted portions are admitted.
Excerpts only are admitted on WZ 001534, WZ 001533, WS 002331, WZ 001535, WS 001609 and WZ 001556.
Court Exhibit 58:
Viscusi 1.
Viscusi 2.
Viscusi 3.
Viscusi 4.
Viscui 5.
Viscusi 6.
Viscusi 7.
Viscusi 9.
Viscusi 12.
Viscusi 14.
Viscusi 15.
Viscusi 16.
Viscusi 17.
Viscusi 18.
Viscusi 19.
Viscusi 20.
Viscusi 21.
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Viscusi 22.
Viscusi 23.
Viscusi 24.
Viscusi 26.
Viscusi 27.
Viscusi 28.
Viscusi 29.
Viscusi 30.
Viscusi 31.
Viscusi 32.
Viscusi 33.

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WS-002262.
ARF-001716.
WS-003897.
GZ-201265.
ARF-001123.
WZ-001534.
WZ-001533.
WS-002331.
WZ-001535.
WS-001609.
WZ-001556.
MR. BERNICK: To save time. We have two depositions that are going to be read tomorrow from two other people that used to work with the Trust.

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One deposition was taken of a current employee of the Trust. We have provided designations, and the Trust now wants to include substantial counter designations. We would object to this, your Honor.

When it came to their case and depositions of our employees, they were permitted pretty much, with almost no exceptions, to put in their designations, and now we have our case, again with their employees, or former employees, and we now get all this other material that is being included.

If they wanted to call these people they could have. If they wanted to read the testimony as part of their case for the former employees, they could have.

We're now in a situation where we're going to get dramatically longer depositions designations that do not make our points, they make their points.

It seems to me that that's inappropriate, particularly when it comes to their own employees.

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THE COURT: Well, I have the -- these folders. I take it, they relate to some of these problems. I will go through them now.

Defendants' designations of Harold Tyler, file and docket. You needn't do anything further with that.

MR. BERNICK: Would Your Honor want to see the counter --

THE COURT: I think I have them all here.

MR. BERNICK: I suspect that you could not.

THE COURT: Yes, I think they are in here.

MR. BERNICK: Did you file your counterdesignations?

MR. STENGEL: Your Honor, the --

THE COURT: They are here. I mean they are --

MR. STENGEL: Okay. If you have them, that would be fine, Your Honor.

THE COURT: I think they are. Anyway, we will go through them.

MR. BERNICK: Okay.

THE COURT: All right.

MS. MANSFIELD: I have the proposed instructions from

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the defendants.
THE COURT: All right.
MR. FINK: Plaintiffs have a competing proposal.
MR. MANSFIELD: I am handing to the Court both the plaintiffs' and the defendants' proposed instructions.
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THE COURT: Defendants' is marked Court Exhibit 59.
(Marked.)
Plaintiffs is Court Exhibit 60.
(Marked.)
THE COURT: I think I will give my standard instruction, which I think is appropriate here. That is, BAT is no longer in the case. Do not speculate on the reasons. That seems to me to be enough.
Any objections?
MS. MANSFIELD: Your Honor, we would want the basis though to be a legal determination so the jury in fact doesn't speculate that they settled.
THE COURT: I will tell them not to speculate. They won't speculate. They do just what I tell them to do.
Okay. Let me turn now to Pritchard, Raymond Pritchard. What's the problem?
MR. BERNICK: That's been taken care of. That's the one I said we will read all of their counterdesignations.
THE COURT: Okay. So that's solved.
MR. BERNICK: Yes.
THE COURT: File and docket.
THE COURT: Martha Thomas.
MR. BERNICK: Solved. That's one we just already talked about with the Court. I will just read all their counterdesignations.
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THE COURT: All right. File and docket.
THE COURT: Now, Leland Smith. Leland Greg Smith.
MR. BERNICK: Yes. I am not sure. Do you have the --
THE COURT: I have the file. Which includes their counterdesignations. They don't seem to be very important. They are Rule 106 matters.
MR. BERNICK: I frankly do not have --
THE COURT: Do you want to look at it?
MR. BERNICK: Yes, I would like to just look at that briefly. I know it's a short deposition.
THE COURT: My inclination, having just briefly gone through it, to allow everything either side wants.
MR. BERNICK: It is a much more substantial problem when we get to Mariana Smith.
THE COURT: Yes, I know.
MR. BERNICK: I've got the -- I've got this, Your Honor.
THE COURT: My inclination is to let everything in.
MR. BERNICK: I -- could I ask for the Court's indulgence? I don't have the hard copies to be able to --
THE COURT: Here, take my copies.
MR. BERNICK: All that is is the line and page designations.
THE COURT: No. It also includes the hard copy.
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MR. BERNICK: I know. What I am having brought over is the actual pages pulled for me that are the

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counterdesignations so I can --
THE COURT: They are on here. They have marked them in green and red.
MR. BERNICK: Oh, they have? Okay.
THE COURT: They are very effective opponents.
MR. BERNICK: That's what happens when people have too much time on their hands.
THE COURT: I now have a civil motion in another matter.
Do you want to go through the Mariana Smith and Patricia Houser counterdesignations so you will be prepared to argue it? You haven't seen the material.
MR. BERNICK: I have seen their volume.
THE COURT: Here. Take all three of them and return them. First let me hear this motion.
(Recess taken.)
THE COURT: Are defense counsel prepared to address the Houser and Smith and Pritchard?
MR. BERNICK: You are pushing the limits here.
THE COURT: May I have the folders, please?
MR. BERNICK: Yes. I have frankly marked it up in order to indicate, I can give the Court the -- the four tabs here. We are agreeable to all the counterdesignations in the

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interests of avoiding controversy except that the ones that I have marked we would -- we would not be agreeable to because they are really -- they are really driven by our including in our designations testimony regarding the impact that punitive damages on the ACF settlements. They objected to that and what we will do is withdraw our designations of the testimony relating to the impact of punitive damages on ACF settlements, at which point the balance of the other side counters should also come out. I think that that accounts for the tabs that are there, the last tab might be something else.
THE COURT: All right. That seems sensible.
MR. STENGEL: One question of counsel.
THE COURT: I don't want any punitive damages introduced through this deposition.
MR. STENGEL: Your Honor, one clarification. Professor Dunbar does rely on Greg Smith testimony about ACF punitive damages as frankly the only support to import some component of punitive damages into his assessment of what the Trust did. If that testimony is going to be put before this jury through Professor Dunbar then we want the counters in. It is fair under 106.
THE COURT: Is not going to put it in, as I understand it. You are not going to mention punitives?
MR. BERNICK: I have to go back and talk with Doctor Dunbar but obviously if the underlying testimony is not coming

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in, that would have an impact on Doctor Dunbar's work. I don't know that he actually quantifies the impact of punitive damages per se.
MR. STENGEL: He does. Six percent premium under the TDP. Six percent of --
MR. BERNICK: Maybe I ought to take this all back. The fact of the matter is, the ACF values were used to determine the Trust values. For whatever reason. We don't have to call it punitive damages. You can call it special factors, whatever you want. But the ACF values were used to determine the Trust's values. It has a -- as a consequence --

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nothing to do with tobacco, that portion of the ACF values. So if that's why Doctor Dunbar has not -- has them included in his analysis. Through Doctor Dunbar. We can give it another designation if the Court is uncomfortable in talking about punitive damages. I don't need the --

THE COURT: I really don't care too much. I don't think it makes much difference here with this jury.

MR. BERNICK: What I will propose is we will withdraw the designation of Smith. We can take up in connection with Doctor Dunbar's testimony this issue if it is a real issue. We would be satisfied by having Doctor Dunbar testify that there is an additional component of six percent based on the record that is non-tobacco factors, if that accommodates the concern.

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MR. STENGEL: Your Honor, I can't cross Professor Dunbar because he's done something which I think to this jury will be facially silly which is take a trust which has never been amenable to punitive damages and jammed in a six percent premium for prunitives. I have to be able to say this is something you could never under any circumstances recover from the Trust, correct? If Mr. Bernick gets to recast the record so it is something double secret, special damage category, I don't know how I deal with that on cross.

MR. BERNICK: Wait. Counsel is getting all concerned and upset about the fact. The problem is not that the Trust was amenable to punitive damages. We don't care. The point is that the Trust determined its pricing by taking the ACF settlements. The preC period of time, in order to get the job done, all the Trust did was to borrow the ACF settlement prices. That's how they did business. Whether or not that was a good idea or bad idea because there weren't punitive damages, they took the ACF pricing. That had all kinds of stuff in it that has nothing to do with tobacco and nothing to do with us. So we want to bring out what it is that the ACF pricing included that had nothing to do with tobacco, nothing to do with us.

THE COURT: If you get involved in punitives, it will be in the case. I would prefer to keep it out.

MR. BERNICK: What I am struggling with, Your Honor,

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is that I am prepared to not even mention the word punitive damages. We are just talking about a non-tobacco factor. If he wants to use Mr. Smith's deposition which Mr. Dunbar has relied upon in order to cross-exam him on whether the ACF pricing in fact included that component or not, he can certainly do it. But it's got nothing to do with the price of eggs in China to talk about the fact that the Trust was not amenable to punitive damages. It is completely irrelevant. The ACF prices included things that had nothing to do with us. All we are doing is subtracting them out. All that we are doing. The only purpose of the proffer. I don't know if I am making myself clear with the Court.

THE COURT: You are not entirely making yourself clear. I don't understand "nothing to do with you" component of your argument. If there is a slight possibility that the ACF included the slight possibility of punitive damages, why would that be of no concern to you?

MR. BERNICK: It is not of concern to us what the source of the component was.

THE COURT: Right.

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MR. BERNICK: We don't care if it's punitive damages or something else. The point is that it is not tobacco. It is a portion of the ACF pricing that has nothing to do with us.
THE COURT: I don't understand. That's what I don't
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understand. It has nothing to do with you? It's got to do with damages which they claim included portions attributable to you. What difference does it make what the special factors are? There may be special factors that the claims were in Louisiana, which is very favorable to plaintiffs or that a certain percentage of them were in Brooklyn, which is very favorable to defendants in these cases.
MR. BERNICK: Because during this period of time, the Trust did not do during this period of time, the preC period of time, the Trust did not do its own pricing analysis.
THE COURT: What difference does that make?
MR. BERNICK: Because it is the pricing that came out of the ACF that then determined --
THE COURT: The ACF was acting for all of the asbestos people including Manville. What's the point?
MR. BERNICK: Because the ACF prices created the benchmark for the later prices.
THE COURT: I understand that. But the ACF was in good faith acting for all of the asbestos people, including Manville.
MR. BERNICK: That's fine. If the ACF price is at X dollars and that goes forward and it is used by the Trust, we want to say that those X dollars included a lot of stuff that had nothing to do with us. Yet, they are --
THE COURT: It does have something to do with you.
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MR. BERNICK: No. That's the issue of fact for the jury.
MR. STENGEL: Your Honor, there is really a much easier solution here. The problem is what the nature of the Smith testimony that Dunbar relies on, it's not as clear as Mr. Bernick would like it to be. He testifies that under certain specific circumstances they thought about punitive damages. Mr. Bernick and Professor Dunbar want to read that as importing a whole slice of premium into the ACF. I don't think that matters. I think Mr. Bernick has to make a decision if he doesn't want punitive damages, the whole testimony of Mr. Smith in, then he and Doctor Dunbar abandon that premium. Otherwise it all comes in.
MR. BERNICK: This is taking up too much time. I will do their counterdesignations on this point. It doesn't make a difference to us.
THE COURT: Okay. May I have the brown folder, please?
This is the deposition of Leland Gregory Smith. File and docket. Everything comes in.
MR. BERNICK: Fine.
Over the morning during the other testimony, I will look through the other depositions, Your Honor, and handle them in the same fashion.
THE COURT: All right. You are holding out the files
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on Houser.
MR. BERNICK: Houser and Smith. I won't go anywhere

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with them. I will leave them here.
THE COURT: We will take them up later.
Are there any problems with respect now to the reading of anybody else's?
MR. BERNICK: Not that I --
THE COURT: Just Houser and Smith.
MR. BERNICK: Yes.
THE COURT: Okay. We will deal with them later.
All right. The next thing I want to take up with you is the letter of January 6 of Mr. Stengel with respect to the updated estimates. Shall I mark this as a Court Exhibit? Court Exhibit 61.
(Marked.)
There is a letter attached as part of this exhibit by Jeffrey Harris which gave some technical data. I assume that's sufficient.
MR. BERNICK: Yes. I believe that the -- am trying to get my own copy here, Your Honor.
I believe that the information is sufficient. Obviously, Your Honor asked for information cut a number of different ways without resolving the question of what could be put to the jury of those different components. But I believe that the information is sufficient for our purposes.

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MR. STENGEL: Your Honor, just one point of clarification for the record. We have included two measures of damage under the Consumer Protection Act because as we noted in the jury instruction, we have a different view I think from the Court potentially on what date should trigger. To avoid delay we have --
THE COURT: Yes, I have noticed that. We will have to take that up. I tend to agree with the defendants, but I will hear argument on it when we get to that point in going over the charge.
MR. BERNICK: I think probably we would have to take this up the -- this afternoon. I am only thinking of Doctor Dunbar's testifying tomorrow. So we want to be able to represent -- he may -- we may get to him by tomorrow afternoon.
MR. STENGEL: We've got no notice of Dunbar for tomorrow. We have him for Wednesday.
MR. BERNICK: The sequence you have gotten. It is a question of how quickly we move through the testimony.
THE COURT: I don't know what the plaintiffs want to do about presenting this to the jury. I suspect that the best way to present it is through a live witness rather than through a document. Otherwise, it is just too dense on rebuttal. I know the defendants don't like that, but I think that's the situation.

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MR. BERNICK: Shall we hold off having Doctor Dunbar testify?
THE COURT: No. You can have him testify on the issue. You know what the plaintiffs' representatives are going to say.
MR. BERNICK: My --
THE COURT: Excuse me. There are two aspects of it. Are you going to have a witness come in on the projections with respect to 2001 and 2002?
MR. STENGEL: Your Honor, that I hope we would be able to avoid because these are cut straight out of the

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presentation that Doctor Florence made to the Court and the jury.

THE COURT: You have to decide what you want to do. If you want to stipulate on what he would testify to with respect to the claims that will be approved, which is the issue, I think, in the year 2001 and 2002, that's okay. If you want to bring him in, that's okay.

But I think with respect to the impact of the various numbers up to the end of the year 2000, probably be better off with a witness.

The witness, I said originally in the Daubert hearing, will not be permitted to project into 2001 and 2002. That ruling remains. That you will have to handle in your argument.

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MR. BERNICK: I was with you until that very last step, Your Honor.

THE COURT: The model will not be permitted to extend beyond the end of the year 2000.

MR. BERNICK: Essentially you have a hybrid. You have the model going up to the end of the year 2000. For 2001, 2002, they are using Doctor Florence's estimate which is not an estimate that is really -- it's not really an output from the model. It's a total estimate of claims.

THE COURT: I will allow the jury to use all of the evidence including the model and everything else they want to use to project into 2001 and 2002. But I won't permit the expert to testify.

MR. BERNICK: Okay. Then can I ask whether, Jim, the number of -- for future claims 2001, 2002, is that type of projection or whether you are simply taking Florence total and taking ten percent of it?

MR. STENGEL: No. The Florence model runs on a year by year basis, what was presented was five-year intervals just because it is too dense from an information perspective. Literally all Doctor Florence did was extract from the model those two years.

MR. BERNICK: No. I understand that. But the question is, the question is, whether the number here is the output of the model extended through 2002? Or whether it's a

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raw number?

MR. STENGEL: Obviously, the extent it is reduced to a dollar amount, what happens is we take the percentages that the model generates, the 50 percent for lung cancer, for example, and merely take that against the futures for those two years.

MR. BERNICK: Okay. The other concern I have, Your Honor, is that if they are going to have a live witness who is going to come in, really for a very limited purpose then, which is literally to present these numbers. Is that what we are talking about?

THE COURT: That's what we are talking about, as far as these numbers are concerned. Whether they have some other rebuttal, I am not ruling on now because I don't know what else they are going to do.

MR. BERNICK: If they are going to do that, then I would urge that we have Doctor Dunbar talk about the entirety of his testimony but not actually deal with their numbers. It looks very odd in front of the jury for our witness --

THE COURT: You want to come in after they have

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rebuttal?
MR. BERNICK: On the very narrow --
THE COURT: Okay. I have no objection.
MR. STENGEL: Your Honor, I'm sorry. I appreciate there is some judicial patience involved too. We were put to

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the numbers immediately because Mr. Bernick insisted he had to have these in hand the past weekend.
THE COURT: I understand. He has tactical problems. I am not going to lean on him to change his tactics. This is an extra issue. If he wants to do it that way, it is okay. That would be the normal way of proceeding anyway.
Is there anything else? It's 10:00 o'clock.
MR. WESTBROOK: Your Honor, we have a matter with Professor Martin. It probably won't come up until after the next break. It is our papers concerning Professor Martin's testimony about school textbook and tobacco company documents that we wish to put in and discuss with professor Martin. I don't know if Your Honor has seen it. I have an extra copy.
THE COURT: I have not.
MR. WESTBROOK: Your Honor can take a look at this in one of those moments.
THE COURT: Thank you.
(Continued on the next page.)

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MR. WESTBROOK: This won't come up until at least after the first break, your Honor.
MR. KRAUS: Your Honor, we vigorously object to any motion that they ought to be allowed to use three or four letters written to -- one to a school principal, and two or three others to schoolchildren.
They don't relate to the issue on which we offered the school textbooks. We offered the school textbooks as further evidence as to how commonly understood the risks of smoking were. Individual letters to schoolchildren say nothing whatsoever about that issue.
We also have a significant Rule 403 objection. It's obvious what they are doing with these letters, is to try and make an inflammatory argument that relates directly to your in limine ruling that precludes any evidence about youth marketing.
THE COURT: I don't see it. I'll allow it.
MR. KRAUS: We vigorously object that this undercuts your in limine ruling.
THE COURT: You opened up this whole issue about the effect on children.
MR. KRAUS: No, your Honor.
We asked you whether this would be a violation of your ruling on youth marketing, and was told that it wouldn't.
THE COURT: It's not marketing. I don't see that it

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is. Let me see the letters.
MR. WESTBROOK: As we point out in our memo, they are

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not youth marketing. The Tobacco Industry specifically tells the schools, we don't think you should smoke. They speak to the issues in the textbooks.

If your Honor takes a look at them, you'll see that addresses that issue.

MR. KRAUS: What does that have to do with the issue of common knowledge? These are individual letters to individual recipients. They don't say anything whatsoever about what the public at large knew and understood about the risks of smoking. The only point -- I think it's obvious -- the only reason Mr. Westbrook wants to use them is to paint some picture that the tobacco companies were trying to induce children to smoke.

THE COURT: I don't think so. It seems to me they show a responsibility.

MR. KRAUS: Your Honor, they are not related to the textbooks temporally at all. The textbooks we introduced were from 1897 to 1955. We're talking about letters in the late'60s into the late '80s and into 1990.

MR. WESTBROOK: The letters start in 1963, and they go to this issue. They said the debate had been settled on the question of whether smoking is injurious to health.

MR. KRAUS: If there was a question about whether or

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not smoking causes disease, that would be different.

THE COURT: People learn by reason of nontextbook information.

The plaintiffs' motion is granted.

Are we ready to proceed with the jury?

MR. WESTBROOK: Yes, your Honor.

THE COURT: Are we having a witness take the stand? All right. Have the witness come forward, please.

J A M E S K I R B Y M A R T I N,

called as a witness, having been previously duly sworn, was examined and testified as follows:.

(Jury present.)

THE COURT: Good morning, everybody.

THE JURY: Good morning.

THE COURT: Everybody sit down. We're going to continue now with Dr. Martin.

MR. MANSFIELD: Your Honor, there is that issue of the ruling, the instruction to the jury.

THE COURT: Yes.

There was another defendant here, B.A.T. Remember them? B.A.T. Industries. They are out of the case. Don't speculate on why they are out. Do you understand that? You can only get the wrong answer by speculating.

So, they are out, and that's all you have to know; correct?

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Do you all understand that?

THE JURY: Yes.

THE COURT: Everybody is shaking his head yes, except Juror Two.

A JUROR: No problem.

THE COURT: Let's proceed.

MR. KRAUS: Good morning, ladies and gentlemen.

DIRECT EXAMINATION (Continued)

BY MR. KRAUS:

Q. Good morning, Dr. Martin.

A. Good morning.

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Q. When we left off on Thursday, we were talking about messages in movies about the risks of smoking and the difficulty people might have in quitting.

I would like to now change subject areas, and focus on coverage in the media of the scientific studies that began to come out about the association between smoking and serious disease, particularly lung cancer, in the 1950s; okay?

A. That's very fine, yes.

Q. Did New York newspapers, for example, publish stories in the 1950s about those scientific studies that were beginning then to come out?

A. Yes, they did, and I think we have a slide which will --

MR. KRAUS: 22. Your Honor, this is Martin Demonstrative Number 19.

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BY MR. KRAUS:

Q. Can you read for the jury what those headlines were, and from what newspaper they came?

A. Yes. These are headlines from the New York Times, "Smoking found tied to cancers of lungs; 94.1 percent of males studied used cigarettes." Please note the date, May 27, 1950.

This is in relation to a very famous epidemiological study by Drs. Ramm and Wynder, in which they studied some 600-plus males, and saw this particular number, 94.1 percent, of males studied had used cigarettes; that is, those that had developed lung cancer.

Then, if we look at the second headline, this is the follow-up story in the New York Times, July 18, 1950, "Cigarettes linked to cancer of lung." Here, we have teams of scientists meeting in Paris who are coming up with similar types of information.

Q. Was the New York Times the only newspaper to report on these studies, or are these just examples of the type of coverage that you saw across the country?

A. These were actually examples of coverage that I have seen from newspapers across the country.

Q. The next slide.

MR. KRAUS: Your Honor, this is Martin Demonstrative Number 20.

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BY MR. KRAUS:

Q. As we went forward in the 1950s, and there were further studies published by scientists about the health risks of smoking, did they also receive coverage in the newspapers?

A. Yes, they did. Very regular coverage, as a matter of fact.

Q. Can you explain to the jury what this Demonstrative shows?

A. Yes. This Demonstrative, these articles are from the early 1950s. And I think what's important to observe here, sort of picking up on the story that we looked at in the previous slide, here, we have role of excess smoking studied in cancer cases. We have doctors see cancer peril in cigarettes. We have an article "Lung cancer rise is laid to smoking." And then, finally, I think this particular headline ties together themes that we have -- at least I've tried to elucidate before, and that is, cigarettes really are coffin nails.

These are all area papers: The Brooklyn Eagle, no longer in business, Newsday, the New York Daily News, the New

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York Times, so on and so forth. These are headlines that appeared in newspapers in this particular part of the country.
Q. Again, are these examples of the type of coverage that you saw in your research across the country?
A. Yes, very much so.
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Q. How about magazines, popular, large magazines, in particular of the 1950s, did they also cover the scientific controversy about smoking and health?
A. Yes, they did, with regularity.
Q. Are you familiar with a magazine known as Reader's Digest?
A. Yes, I am.
Q. How popular was Reader's Digest in the 1950s and 1960s?
A. From what I have been able to tell, Reader's Digest had the highest circulation of -- subscription rate of any magazines in the United States in the 1950s and into the 1960s. Circulation rates were well above ten million; as I remember, thirteen, fourteen, up to sixteen, seventeen million. The estimate is, a Reader's Digest, as a magazine, probably, if you take the actual number of residences in the United States in the '50 and '60s, the estimate is probably one out of four to five residences actually had a copy of the Digest in that particular residence. So, this is a major publication.
Q. Did Reader's Digest write regularly about the scientific controversy concerning smoking and health in the 1950s and '60s?
A. Yes, it did.
Q. Have you prepared a Demonstrative with some examples?
A. Yes.
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MR. KRAUS: Number 18, please.
A. This is a slide. Here, we have five examples from Reader's Digest. The circulation note in 1962 of thirteen million. And I think it's important to consider the headlines of these particular -- I'm having a little bit of trouble seeing it on the screen.
Q. Can I read them to you? Maybe that would be easier for you.
A. Okay.
Q. In December 1952, the one in the upper left-hand corner, "Cancer by the carton."
In the middle of the upper line, July 1954, "The facts behind the cigarette controversy."
In the far right-hand corner, the upper line, July 1957, "The facts behind filtertip cigarettes."
On the lower line, June 1962, "Lung cancer in cigarettes, here are the latest findings."
April 1964, "Cigarettes tried and found guilty."
Is that consistent with your recollection of the titles of those articles?
A. Yes.
Q. Have you, of course, read all of them?
A. Actually, I have read all of these articles. Reader's Digest, going back into the 1920s, published I think it's in the number somewhere in the thirties. Consistently, it was
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publishing articles having to do with cigarettes. And this is a very, I think representative, sample.

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Q. Were those articles pro- or anti-smoking?
A. There was never, so far as I know, a pro-smoking article in Reader's Digest. They were all basically anti-smoking.
Q. What was their basic message?
A. The basic message was, if we go back to an article that is not listed here, in the 1950 Reader's Digest, it raises a question, "How harmful are cigarettes?" The basic message is that cigarettes are harmful to health, that it is difficult to quit, and that the Digest will actually publish a number of articles suggesting ways to quit smoking, and that it would be the best thing you can do for your health, to stop smoking.
Q. Approximately how many articles, between the mid-1920s and the mid-1960s, did Reader's Digest publish on the risks of smoking?
A. It was in the thirties, the mid-thirties, thirty-five, thirty-six. I think we actually have a slide that will give the number.
Q. Number 19, please.
MR. KRAUS: This, your Honor, is Martin Demonstrative Number 16. The previous one was Martin Demonstrative Number 15.
BY MR. KRAUS:
Q. What did the American Cancer Society have to say about
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Reader's Digest's articles on smoking and health?
A. Well, in the highlighted quotation here, it reads: "Since November 1924, the Reader's Digest has published thirty-six articles on smoking. The American Cancer Society has termed them a "profound influence" in creating public awareness of the risks involved in smoking.
Q. And the date of that was 1964?
A. Yes. Please note that this is a passage just above this particular article, "I quit smoking or Cooper's last stand." This is actually a reprint of an article that had appeared much earlier in the Digest, but the Digest was getting a lot of queries in its mail about, can you suggest ways to quit? And here is an article that was repeated in 1964 on that particular subject.
Q. Was Reader's Digest the only popular magazine to publish anti-smoking articles in the '50s and '60s?
A. No, it wasn't.
Q. Do we have some examples from Life magazine?
A. Yes.
Q. Can you tell us what this is?
MR. KRAUS: This is, by the way, Martin Demonstrative 17.
A. Life magazine -- and this is from late December 1953 -- published a pictorial article. And the headline reads, the words read "Doctors report tobacco tar induces mouse cancer,
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note rise in cigarette use in human lung cancer." The picture is of a very famous physician, Dr. Evarts Gram, who was a famous researcher. I mentioned his 1950 study about smokers and lung cancer. He is one of the authors of that study. And Dr. Gram and his associate, Dr. Ernst Wynder, became heavily involved in doing tar-related research.
That's what's being reported on here, the danger of tar in cigarettes, tar being potentially productive of carcinogens or cancerous substances.
Q. At the top of the slide, you note the circulation of Life at that time was approximately 5.3 million?

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A. Yes. This actually put Life in the top four or five magazines, in terms of national subscription in the 1950s.
Q. Did Life also report, in the 1950s, on the fact that it could be difficult to quit smoking once you started?
A. Yes, it did.
MR. KRAUS: The slide on the screen right now, your Honor, is Martin Demonstrative Exhibit 18.
BY MR. KRAUS:
Q. Does this, again, come from Life magazine?
A. Yes, this is a 1954 article. And with all of these reports coming out about associating smoking with lung cancer, how-to-quit articles are -- they are out there, and they are appearing in many of the major magazines. This quote was: "The fact was, and is, that to break oneself of the habit

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of smoking is a highly uncomfortable experience. Tobacco often has an iron grip on its habitual users."
Q. What was the title of that particular article?
A. I can't quite read it.
Q. "This Week's Topic: A. How do I swear off?"
A. "How do I swear off?"
Q. We're going to have to get you new glasses, Dr. McAllister.
A. Okay.
Q. Did those types of stories continue through the 1950s into the early 1960s?
A. Yes, they did.
Q. Let's fast-forward in time, and let's talk about the first Surgeon General's report in 1964. Do you recall the exact date of the first Surgeon General's report?
A. Yes. The exact date -- it's in early January of 1964, as I recall. It was a Saturday morning press conference, and I think the date is January 11. And the Surgeon General Luther Terry brought something in the area of 300 reporters into a closed room and said, here is the report. Here are our findings about questions having to do with health risks and smoking.
Q. Did that report generate publicity?
A. A massive amount of publicity.
Q. Number 24.

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MR. KRAUS: This, your Honor, happens to be Martin Demonstrative 21.
BY MR. KRAUS:
Q. Are these some examples of headlines generated as a result of the first Surgeon General's report?
A. Yes, they are. And we can see they come from various sources. The New York Times: "Cigarettes peril health. U.S. report concludes remedial action urged."
Newsday reports rise of lung cancer among men.
And we have U.S. News and World Report, a major news magazine: "Here is the latest on tobacco and health."
We have Life magazine's verdict on cigarettes: "Guilty as charged."
And then we have Newsweek, another weekly news magazine: "Cigarette smoking is a health hazard."
These are very characteristic of headlines that appear all over the country.
Q. Did you, in the course of your research, see hundreds of articles across the country on the first Surgeon General's report?

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A. Yes, I did.
Q. What is the significance to you, as a historian, of the scope and breadth and the number of articles publicizing the first Surgeon General's report?
A. Well, if I could begin, perhaps, by offering an example

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or a few examples. The coverage of the first Surgeon General's report was -- there's only one word to describe it, and that is, that it was massive. Newspapers would carry twenty, thirty, forty articles about smoking-related issues in January of 1964 alone.

I saw a survey recently that rated it as one of the top news stories, not only of the decade, as some people have called it one of the most important news stories of the 1960s, but of the whole century. And I think that my evaluation as a historian is, given the massive amount of coverage that there is, and continuing coverage, that it is the beginning of, certainly, from my point of view, one of the most thoroughly covered stories of the 20th Century, which would have a direct effect on levels of awareness about health issues related to smoking, and that would be to suggest that those levels would be very high.

Q. Now, the jury has heard from Dr. Julius Richmond early in the plaintiffs' case, that there was a genuine controversy, about whether or not smoking caused lung cancer, among members of the scientific community up to 1964.

You've testified that there was widespread common knowledge of the health risks associated with smoking even before 1964.

Is there any inconsistency, in your view as a historian, between those two viewpoints?

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A. I don't believe there is. And I'll try to perhaps make a division here between what we would call the scientific debate, which is of a very scholarly nature and involves trying to come up with standards of proof to really demonstrate causation per se.

Some of the -- or many of these early studies that we have been talking about, the early epidemiological studies, were statistical in nature, and they did report very -- a very close statistical relationship, a correlation, between smoking and lung cancer.

And many scientists would argue that wasn't quite enough to really prove the case. And that debate did occur, and I agree completely with Dr. Richmond from that point of view.

At the same time, when you get into the area of public awareness, the public media did not hesitate to go in and cover these stories, because there was a debate going on. What I think is incredible is, how quickly the national media covered these stories. And quite often, the stories would appear with headlines like "Cigarettes are coffin nails" months before the actual scholarly argument would appear in a refereed journal. The media was very focused on the issue, and I think that's one reason that the extensive kind of awareness levels that I believe were there actually do exist. So, I think there's a difference between the two, but they actually

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complement each other.
Q. We're going to talk more about unions later, when we

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discuss issues relating specifically to publish awareness of synergy risks. But more generally, in the '50s and '60s, did the unions also publicize to their members the general risks of smoking?
A. Yes, they did.
Q. Do we have some examples of that?
A. Yes, we do.
MR. KRAUS: This is Martin Demonstrative Number 23.
BY MR. KRAUS:
Q. Can you explain for the jury what this is?
A. Yes, I can. The UAW/CIO -- United Auto Workers -- Ammunition magazine carried a story in 1951. It is fifty years ago next month. You can see the cover of the magazine. It's basically a ring of death. We have coffins, I guess suggesting coffin nails. We have skeletons smoking. Apparently, they are having a difficult time quitting. And you can see the imagery there is one of, if you continue to smoke, this could lead to an early death.
And I think that this is very, very important, because this is not recent information. This is information that came out as early as 1951.
Q. Above the title of the newsletter "UAW/CIO," it says "Lung cancer, cigarette cancer," and then it repeats that

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litany multiple times; is that correct?
A. That's correct.
MR. KRAUS: Can we have the next slide, please.
This is Martin Demonstrative Number 24.
BY MR. KRAUS:
Q. Is this another example of a union message that is anti-smoking?
A. Yes, it is.
Q. Can you explain it?
A. Yes, this is 1966. This is a cartoon in a union newspaper from the International Operating Engineers Union, and the message here is that cigarettes are compared to deadly missiles; don't launch one. Certainly, at the height of the Cold War in the 1960s and 1970s, there was a great deal of concern about launching missiles and perhaps even ending the world and all of the death and destruction that would follow. That is what is the theme that is sort of being played on here.
MR. KRAUS: The next slide, please.
Your Honor, this is Martin Demonstrative Number 25.
BY MR. KRAUS:
Q. This comes from the Carpenter magazine, Dr. Martin, and can you explain the significance of this?
A. Yes. Many of the union magazines, union publications, would work closely with voluntary health organizations like

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the American Heart Association or the American Cancer Society or the American Lung Association and perhaps others. The Carpenter would give coverage -- in this case is giving coverage to cartoons prepared by the American Heart Association. And you can see here the message is: Don't smoke cigarettes, heavy cigarette smokers get coronary disease at a rate of two to three times higher than nonsmokers.
Q. We've now shown the jury three examples of union cartoons and messages. Are those three among many that you saw in your research?
A. Yes, they are.

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Q. Were there also unions, such as the Machinists' Union, that had regular health columns in their newsletters that repeatedly addressed the risks of smoking?
A. Yes.
Q. Do you remember the name of the author of the Machinists' Union health articles?
A. Yes. It is a Dr. Sawyer. And Dr. Sawyer did a regular health column in the Machinist magazine for a twenty-year period. I went through those articles, and these articles that I went through dealt with smoking. And there was sixty-seven of them over a twenty-year period that appeared, or columns that appeared in the Machinist. And they all come to one conclusion: You should do everything you can to stop smoking, and it would be the best thing you could do to

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improve your health.
Q. Following the issuance of the 1964 Surgeon General's report, did the government and the public-health community conduct what you would characterize as an anti-smoking campaign?
A. Yes, they did.
Q. Did that include public-service announcements?
A. Very much so.
Q. And they ran on television?
A. Yes, public-service announcements started in 1967, and actually continued on to our own time.
Q. Have you collected three or four examples of that?
A. Yes, I have.
MR. KRAUS: Your Honor, we would like to play a couple of examples of the PSA's, and they take about four minutes. If we could lower the lights, I think it would enable the jury to see a little better.
MR. KRAUS: Can you play 42 through 45.
(Tape played.)
(Tape stops.)
MR. KRAUS: That's the last of those, your Honor.
THE COURT: All right.
BY MR. KRAUS:
Q. Do you personally remember seeing those at or about the time that they were run, Dr. Martin?

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A. Yes, I do. As a matter of fact, each one of these instances. The William Tallman is a famous presentation. Tallman died within a month or two of the actual filming of this particular public-service announcement, and that drew national attention, obviously, because it was saying there is this connection between smoking and lung cancer that has taken my life, and I'm losing everything that I find so valuable.
I also certainly remember the Yul Brynner. The power of the Brynner presentation is that it was held back and it was played actually after he had died. But he prepared it at a time when he was very close to death.
I have actually reviewed and have in my possession some 120 of these public-service announcements that I have been able to acquire. I think this is very, very repetitive. There's various kinds of campaigns. One of the major American Cancer Society campains of the 1970's was the IQ Campaign, which stands for "I quit." This is a theme that would be played over and over again.
I could go on and on and there's no reason to. I think the point is well made by simply watching these.

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Q. In the late 1950s, was there public discussion about whether or not warnings on the cigarette packs were necessary in light of the widespread common knowledge of the risks of smoking?
A. Yes, they were common.
Q. Did then Surgeon General Burney take a public position on whether or not warnings were necessary in 1957?
A. Yes, he did.
Q. Could we have number 29, please.
MR. KRAUS: This is Martin demonstrative 26.
Q. Is this the public position taken by Surgeon General Burney that you just referred to?
A. Yes, it is.
Q. Could you read it to the jury.
A. I quote -- This is from Surgeon General Burney: "Our position is that we have informed the public through the excellent coverage of the press, radio, and TV. We have informed the official health agencies in the States who are responsible for this area, and we have informed the American Medical Association, recognizing that many people will go to their own physicians for advice."
In other words, we, the Public Health Service, has done everything it can to try and get as much information out as possible about the link between smoking and lung cancer.
Q. Did the American Medical Association also take a public

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stand on whether or not warnings were necessary in light of all the information out in the public domain?
A. Yes, they did.
Q. Can I have the next slide, please.
Do you have a demonstrative exhibit setting forth the AMA's position?
A. This is in 1964, April of 1964. There was a lot of discussion going on at that time should we proceed to warnings labels, and the position at that time of the American Medical Association is, and I quote:
"With respect to cigarettes, cautionary labeling cannot be anticipated to serve the public interest with any particular degree of success. The health hazards of excessive smoking have been well publicized for more than ten years and are common knowledge."
Q. Do you agree with that?
A. Yes, I do.
Q. Now, of course, we know that Congress did eventually pass a statute requiring warnings. We are going to come back to what those particular warnings were in just a second.
After the warnings were issued on the packs, did a gentleman by the name of Daniel Horn, from the National Clearinghouse on Smoking and Health, take a public position on how well spread the risk, the knowledge of the risk of smoking was?

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A. Yes, he did.
Q. Could we have the next slide, please.

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Could you tell the jury what Dr. Daniel Horn, from the National Clearinghouse on Smoking and Health, had to say.
A. If I could just perhaps give you a little more information about Dr. Horn.
He is a major scientist in the 1950s and the 1960s working on a variety of studies having to do with smoking and health, and he becomes head of the National Clearinghouse on Smoking and Health of the Public Health Service in, I believe, 1965.
He was attending a medical conference in Syracuse, New York in 1968. He offered an interview to a reporter, and the reporter asked him about how widespread is the information about smoking and health, and this is what he had to say:
"You could stand on a rooftop and shout 'smoking is dangerous' at the top of your lungs and you would not be telling anyone anything they did not already know."
MR. KRAUS: That is Martin demonstrative number 28.
Q. You mentioned, or I mentioned that there were in fact warnings required by Congress. Just so that we can complete that aspect of the story, have you prepared a slide setting forth what those warnings have been over time?
A. Yes.
Q. Could we have number 32.

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MR. KRAUS: This is Martin demonstrative number 29, your Honor.
Q. This slide sets forth the warnings as they existed in 1966, '69 and then the rotating warnings that started in 1984, correct?
A. That's correct. Congress provided for legislation in 1965 calling for the first warning, which appears at the upper left-hand corner: "Caution. Cigarette smoking may be hazardous to your health."
Some individuals felt this warning was not strong enough and so it led to a revised warning that appeared in -- began to appear in 1969, "Warning: The Surgeon General has determined that cigarette smoking is dangerous to your health," in this case.
That was the warning on cigarette packs until 1984, when Congress approved a rotating warning label system, and these are the four warning labels on the right-hand side which appear on cigarette packs literally down to today.
The first one: "Surgeon General's warning. Smoking causes lung cancer, heart disease, emphysema and may complicate pregnancy."
The second warning: "Surgeon General's warning. Quitting smoking now greatly reduces serious risks to your health."
The third: "Surgeon General's warning. Smoking by

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pregnant women may result in fetal injury, premature birth, and low birth weight."
And then the fourth Surgeon General's warning: "Cigarette smoke contains carbon monoxide."
Q. To the best of your knowledge, have these warnings appeared on all cigarette packs from 1966 to the present?
A. I would assume so, yes.
Q. Let's turn to polling data. In the course of your research have you discovered polling data that addresses whether or not the message about the health risks associated with smoking was getting through to the public?

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A. Yes, I have.
Q. In fact, have you discovered such information dating as far back as the 1950s?
A. Yes. I have.
Q. Do historians regularly rely on polling and survey data in their work?
A. Yes. Perhaps what I should do is just offer a bit of explanation.

Modern public polling first came into play in the United States in the 1930s, associated with such organizations as the Gallup Organization, and then others would come along, so that once you have public polling that is accurate and is scientific in its nature of sampling, this becomes a very, very valuable resource.

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Historians use these polls with regularity to try to gain a sense of what the public was indeed aware of at particular points in time.
Q. Are you familiar with a 1954 Gallup Poll on the public awareness of the association between cigarette smoking and cancer of the lung?
A. Yes, I am.
Q. Could I have slide number 46, which is Martin demonstrative number 30.

Can you tell the jury what the question was that the Gallup Organization asked and what the results were.

This is in 1954, correct?
A. Yes. That's correct. In 1954, mid-June, the question that was asked was: "Have you heard or read of anything recently to the effect that cigarette smoking may be a cause of cancer of the lung?"

We can see here that it's an overwhelming number. 90 percent did say yes as compared to 10 percent no.
Q. How does that 90 percent awareness figure compare to public awareness polls of other events, historical events, that you are aware of?
A. This is -- 90 percent is a very high number. It's very high, especially in this context because this poll was actually taken a week before a major -- reports of a major epidemiological study come out, and so this can only be

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described as a very high number in comparison to others that I have seen.
Q. Have you prepared a slide comparing this 90 percent figure to public polling results for other historical facts?
A. Yes.
Q. Could I have number 51, which is Martin demonstrative number 35.

Can you explain to the jury what you're comparing here?
A. Yes. On the left-hand side we have the question that we just reviewed: "Have you heard or read that cigarette smoking may cause lung cancer?"

I set this up to compare it with other items. Here's a question from 1983. Individuals named the first president of the United States. That is very high number; 89 percent were aware that George Washington was the first president of the United States.

Then after the Masters Tournament in 1997, the golf tournament, Tiger Woods, who has become a very, very famous individual, 75 percent of the population were aware that he

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had won the Masters.
My guess is today that number would actually be much higher because he's gone on to become by are far and away the greatest golfer in the world. So I think that would probably be higher.
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But if we go across, three-fourths of the population knew that an atomic weapon had been used in wartime to help end the Second World War. That is a very high number.
Then, as we go down, the numbers are going to go down. 49 percent in 1954 could identify the first book of the Bible, Genesis. 34 percent in 19 -- I believe that is 1954, I've got to cheat again --
Q. It is 1954.
A. Okay. 34 percent knew that Jesus had delivered the Sermon on the Mount, and only 19 percent could identify the three branches of the Federal government, again in 1954, with the Executive, the Legislative and the Judicial branches being the correct answer.
So what you see is, is that 90 percent is a very high number in terms of public awareness.
Q. Did the Gallup Organization do other polls in the 1950s addressing the public awareness of the risk of smoking?
A. Yes.
Q. And I want to refer you particularly to a poll they did in 1957.
MR. KRAUS: That is slide 47, Martin demonstrative number 31, your Honor.
Q. What was the question that was asked here and the result obtained?
A. The question is actually very specific, and it says:
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"Did you happen to read or here about the recent report of the American Cancer Society reporting the results of a study on the effects of cigarette smoking?"
This refers to the Hammond and Horn -- I just mentioned Daniel Horn a few minutes ago -- study showing a high statistical association between smoking and lung cancer.
In terms of all respondents, the answer was yes, 77 percent had heard that, they were aware of that.
Q. Did the Gallup Organization break these results down by smokers, also?
A. Yes, they did.
Q. Could I have the next slide, please. This is Martin demonstrative number 32.
What did the Gallup Organization find as the level of awareness of that specific study among smokers?
A. They found that smokers were actually paying more attention, I guess, than you would say the general population. So in this case it is 82 percent of the smokers were aware of -- were following this particular study.
Q. What did George Gallup, the founder of the Gallup Polling Organization, have to say about these numbers?
A. George Gallup found these numbers to be very, very impressive. In fact, he uses -- and we have a slide with his quotation.
Gallup, in 1957, actually for several years, prepared
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newspaper columns and he would do summaries of his polling, and this is a summary from 1977 of the same poll we just

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looked at, and Gallup wrote:
"More than three out of every four adults questioned, or 77 percent, said they had heard or read about the report, a phenomenal figure in polling annals."
So he thought that was strikingly high. And this is one of the major founders of public polling in Twentieth Century America.
Q. If you assume that 77 percent is a phenomenal figure, then the 90 percent from the 1954 poll is an even more phenomenal figure?
A. I think I would assume that, yes.
Q. Did this poll itself generate further publicity about the association between smoking and lung cancer?
A. Yes, it did.
Q. Can we have the next slide, please. This is Martin demonstrative number 34.
Could you just read the titles for the jury.
A. These are all in reference to the particular Gallup Poll, and we've got three samples. The Philadelphia Evening Bulletin: "Cigarettes linked to cancer? Public now thinks so."
On the right-hand side, we have from a Cleveland newspaper: "Public sees cancer tied to smoking. Poll shows

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report had impact."
Then on the left-hand corner, from the Syracuse Post Standard: "Public sees smoking link to lung cancer." So that association is being made.
Q. In the sixties, seventies, eighties and nineties, did the Gallup Organization continue to take polls about what the public knew and thought about the link between smoking and serious disease?
A. Yes, they did.
Q. Have you collected some examples of those polling results?
A. Yes.
Q. Could we have slide number 52, which is Martin demonstrative number 36.
What do these results show?
A. These results show -- if we look at this, we have the question being asked now: "Do you think that cigarette smoking is or is not one of the causes of lung cancer?"
In terms of this question, the answer is 71 percent think that is true in 1969. That number will jump to 90 percent in 1977, and from the National Center of Health statistics in 1985, the number will jump up to 95 percent. The question is very, very close and very similar.
And then the final poll on the right-hand side, the Gallup Poll in 1990, same question: "Do you think cigarette

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smoking is one of the causes of lung cancer?" That number is up to 94 percent.
Q. There's been much discussion during this trial about tobacco company advertising and its effect or lack of effect on public awareness of the risks of smoking.
In your view as an historian, did tobacco advertising have any material effect on the level of public awareness of the risks of smoking?
A. Well, I think these numbers suggest the answer, and that is that tobacco advertising did not have an effect. These are extremely high numbers in terms of levels of the public

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awareness.
Q. Let's change subjects now, Dr. Martin, and let's move to the area of synergy, the interaction between smoking and asbestos exposure.

Have you also researched the question of public awareness of the risks of synergy?

A. Yes, I have.

Q. What kinds of research have you done in that area?

A. Well, I've looked at a whole variety of documents. I think we have a slide which summarizes the kinds of material that I've looked at.

I've looked at union publications, I've looked at scientific articles, I've looked at material related to Dr. Irving Selikoff, I've looked at government publications,

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newspaper articles, materials from voluntary health organizations, such as the American Lung Association or the American Cancer Society. Those are the kinds of sources, to give you a representative sample.

Q. Have you prepared a demonstrative listing some of the public sources of information about the risks of synergy?

A. Yes.

Q. Could you put up number 54, which is the same thing as the chart here.

MR. KRAUS: Ladies and gentlemen, can everyone see the chart?

Q. Can you just briefly, with the assistance of this chart, identify for the jury the potential sources of information about synergy that we're going to talk about the remainder of your testimony.

A. Okay. The first under Medical Publicity, we'll begin with Dr. Irving Selikoff. Dr. Selikoff was central to this subject, and so we have some materials relating to his activities.

Government Regulation and/or Publications. Government, and we could even say government campaigns to spread information about asbestos exposure and synergy, we'll see some materials along that line.

Media Reporting would include newspapers, magazines. It would be similar to the kind of material that we've already

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looked at but would be more specific to the subject of synergy.

Union Publications come in various types and kinds but, by and large, in terms of the material I've reviewed, much of that material has to do with the various union magazines that -- and I will show you some examples from the coverage of this subject in union magazines.

Public Health Information, that would come from a variety of sources, whether it be the Federal government, Public Health Service, National Cancer Institute, other agencies and, also, I would group under this voluntary health organizations, as I mentioned, such as the American Cancer Society and the American Lung Association.

And then I've reviewed materials from Johns Manville Corporation, and also material from plaintiffs' attorneys.

Q. Before we go into examples of the information that was made available, let's talk about the research that you did with respect to unions in particular, because I gather that was different than your research into public sources, such as library collections and the like; is that correct?

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A. Yes.
Q. With respect to the unions, how did you go about accumulating information?
A. Well, there were two basic methods in terms of accumulating information about unions. One was that I, with

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my research assistant, we went to various libraries and we reviewed magazines of various types and kinds, including magazines like The Carpenter, The Machinist, the Oil Chemical Atomic Workers News, along that line.

Then the second source of information actually came through the process of subpoena, which I guess I could best describe as having, in this case, gone to various unions and asking to have those materials turned over that would be relevant to this particular subject, that is the subject of asbestos exposure and synergy.

Q. Let me show you slide number 55, which is Martin demonstrative exhibit 38.

Is this a list of occupations of Trust claimants that you prepared using information provided by one of the experts retained by the plaintiffs?

A. Yes. That is correct. This is meant to be a list of occupations, information provided by the plaintiffs, and if you go down the list we can -- we'll just sweep across it.

Everything from air-conditioning and heater installers to machinists, lifters, firemen, firefighters, pipe coverers, sandblasters, furnace workers; a whole variety of occupations associated with shipbuilding, which is a major area. We have heavy equipment operators, we have brake repairmen, individuals involved in relining breaks, down to sheet metal workers and joiners, or carpenters, of various

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types and kinds.

Q. Based upon that list of occupations, was a list of unions likely to have represented people who worked in those fields prepared as a basis for sending out subpoenas?

A. Yes, it was.

Q. Have you prepared a representative list of some of the examples of unions and other organizations that were subpoenaed?

A. Yes, I have.

Q. Can I have the next slide. This is Martin demonstrative number 39.

Obviously, we don't want to read every one of the names, but could you just pick out a couple of examples of the different types of organizations that were subpoenaed.

A. Yes. If we look on the upper left-hand corner, we have the American Federation of Labor, the Congress of Industrial Organizations, AFL-CIO. Documents were subpoenaed from the national body located in Washington, D.C.

Then we have various unions I could point to, on the right-hand side, such as the Sheet Metal Workers International Association Union, we have the International Brotherhood of Electrical Workers, so on and so forth, various union groups according to trade identification.

Then the third kind would be what we can call the trade departments of the AFL-CIO. The AFL-CIO organizes

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various unions into trade groupings and there is -- as an example we have here the Metal Trades Department.

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So that if a particular craft was related to the metal trade in some way, then that union would be part of this body.

So the Metal Trades Department would be subpoenaed in this case and, then, the final example I point out here would be Dr. Selikoff's archives at Mt. Sinai Hospital, and we did receive materials from Dr. Selikoff's archives.

Q. Is this only a representative list or is this an exhaustive list?

A. This is a representative list.

Q. Do you have some idea of how many members there were at given points of time in the unions that were subpoenaed that had information about synergy in their files?

A. Yes, I do.

Q. Can we have the next slide, please. This is Martin demonstrative exhibit 40.

It says Labor Organizations 1965 at the top. Can you tell us what this is?

A. This is derived from the National Directory of Labor Organizations, published by the Federal government, and here we have a listing of these unions, everything from insulators to carpenters to painters, to paperworkers, to steel workers, so on and so forth.

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So, in terms of this group we were just talking about, in 1965 the total membership was 7.88 million, 7.8 million people would be involved in those jobs.

Q. Let's take a look at what it looks like in 1975.

This is Martin demonstrative number 41.

A. This would be the same group. Membership has gone up slightly. There is no reason to repeat, I don't believe, the names here, but we see the membership of this group has now grown to 10.5 million, represented in some 26 thousand locals.

Q. And in the course of your research, have you found warnings about synergy issued by each and every one of these unions?

A. Yes, I have.

Q. How do you know that the warnings issued by these unions in their newsletters and other publications actually got sent to their members?

A. Well, the way that I can be assured of this -- again, I'm asking this question as an historian -- is that each one of these unions operated by constitution; in other words, they were organized by legal document, and in those legal documents there was a requirement that publications must be sent to union members who are paying their dues.

So that it would only follow, and, certainly, I have not found any complaints about publications not being sent.

Q. Let's get a couple of basic chronologies sets before we

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go into the manner in which the message about synergy got out.

Has the Federal government ever regulated asbestos?

A. Yes, it has.

Q. Through what agency?

A. Through the Occupational Safety and Health Administration, known as OSHA.

Q. When was OSHA formed?

A. OSHA came into being right at the end of 1970, in late December, 1970, so it was actually up and operating in 1971.

Q. And early in the 1970s did OSHA take any action to

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regulate asbestos levels that were allowable?
A. Yes.
Q. What did OSHA do?
A. Well, OSHA engaged in trying to establish what we can call PELs, permissible exposure limits -- I think that is the right term.
There was a great concern about how many particles of asbestos can be in the air, individuals breathing those particles, and at what levels that will actually affect their health and breathing capacity. So OSHA does become involved very early on in looking at those PELs, permissible exposure limits. That is one major OSHA activity.
Q. Over the 1970S did those PELs go down repeatedly?
A. Yes, they did.

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Q. Eventually, did Johns Manville go out of the business of manufacturing asbestos?
A. Yes, Johns Manville did, yes, that's correct.
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EXAMINATION CONTINUES
BY MR. KRAUS:
Q. Let's talk a little bit about the basic chronology with respect to Doctor Selikoff. When did Doctor Selikoff first begin studying the relationship between asbestos and disease, not asbestos, smoking and disease but just asbestos and disease?
A. Doctor Selikoff began his studies in 1962 and after making contact with two local unions of the -- two local chapters of the, what we call, I guess we will call the insulators union, so we are clear that is a particular union as distinct from all workers in contact with asbestos, that physically came with two locals, one in New York and one in Newark and that was in 1962.
Q. When did he first publish on the relationship between asbestos exposure alone and disease?
A. The first publication appeared in the Journal of the American Medical Association, JAMA, in April of 1964.
Q. Did that article discuss synergy?
A. No, it did not.

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MR. KRAUS: May we have number 64, please? This is marked demonstrative number 46.
Q. What did the 1964 article have to say about Doctor Selikoff's conclusions or inability to form a conclusion about the relationship between smoking, asbestos and disease?
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A. The quotation here from the article, and I will read it, is it may be asked whether the high rate of lung cancer among these asbestos workers could possibly be attributed to an unusually large proportion of cigarette smokers among them. We cannot answer this question directly since we have not yet been able to ascertain the smoking habits of the men who died, end quote.
Q. After he published this article in 1964, did Doctor Selikoff go on to study the relationship between smoking and asbestos exposure on the one hand and disease on the other?
A. Yes, he did.
Q. When did he first publicly talk about synergy?
A. Doctor Selikoff made a presentation to the American Medical Association in June of 1967 in which he talked about the kind, what we have come to call the synergistic relationship between cigarette smoking and asbestos exposure.
Q. Where did he give that speech?
A. I believe it was Atlantic City. I am not sure.
Q. Did he subsequently publish a study about synergy?
A. Yes, he did. In 1968, and this is -- we have it up on the screen, in April of 1968. This is four years after the first study and the -- I will read this quotation from this article.
We conclude that asbestos exposure should be minimized, that asbestos workers who do not smoke should never
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start, and that those now smoking should stop immediately, end quote.
Q. This is Martin demonstrative Exhibit 47, Your Honor.
It is from an article entitled Asbestos Exposure, Smoking and neoplasia. Is neoplasia a fancy word for cancer?
A. Yes.
Q. After the publication of its 1968 article, did Doctor Selikoff undertake substantial efforts to publicize, to get the message out, about the risks of synergy?
A. Yes, he did.
Q. Have you prepared a chart to summarize the kinds of efforts that he and his colleagues made?
A. Yes, I have.
Q. Can you put up on the screen number 61, which is the same chart except for a different picture.
MR. KRAUS: For Your Honor's information, we couldn't get that picture to blow up.
THE COURT: Okay. Fine.
Q. With the assistance of that chart, can you summarize for the jury the kinds of things that Doctor Selikoff and his colleagues did to get the word out?
A. Yes.
Let me preface my comment by saying that Doctor Selikoff was an individual of enormous energy, and enormous commitment to getting the word out. He did so in a variety of
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ways, which we summarized here.
First through -- first through scientific articles.

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We have made reference to two just a moment ago.
Secondly, through Congressional testimony, we will provide some examples of that.
Doctor Selikoff was very active with a number of unions, providing them with various forms of assistance and making presentations to them about the dangers of asbestos exposure and with reference to smoking questions.
Doctor Selikoff also attended a whole variety of symposia, conferences. We will have examples.
He engaged in medical monitoring, which I guess is a way of saying that he would work with various union groups to actually study various individuals and consider the lung problems that they may have and to try to advise or provide solutions.
And then finally, Doctor Selikoff would -- did get the word out through the so-called "Green Sheet Program" of his institute at Mount Sinai Hospital, which again we will have examples of the green sheets.
Q. Can we put up number 63, please?
Let's start with his efforts through medical organizations and physicians.
THE COURT: Excuse me.
Do you want to take a break now? Any of you?
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THE JURORS: Yes.
THE COURT: Yes. Why don't we take a short break?
(The following occurred in the absence of the jury.)
THE COURT: The counsel will remain.
You can step down, sir.
THE WITNESS: Thank you.
THE COURT: I have a motion with respect to the testimony of Doctor Sarah Mendelsohn.
MR. SCHROEDER: That's our motion, Your Honor.
THE COURT: Why shouldn't I grant that?
MR. WESTBROOK: Your Honor, based on their representation that Doctor Mendelsohn is not going anywhere near that area, probably it wouldn't be necessary to bring that up. If it were, we would handle it the way Your Honor directed, show the document to the witness and ask whether it changes her opinion. It doesn't look like they will get into that area.
MR. SCHROEDER: She will talk about the claims files and asbestos.
THE COURT: The motion is granted.
MR. SCHROEDER: Thank you.
(Recess taken.)
THE COURT: Have the witness take the stand, please.
(Witness resumes.)
(Jury present.)
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MR. KRAUS: Shall I proceed, Your Honor?
THE COURT: Yes, please.
EXAMINATION CONTINUES
BY MR. KRAUS:
Q. We have Martin Demonstrative Exhibit number 45 up on the screen, Doctor Martin. Let me just clear up a couple of procedural issues.
We have highlighted these at the top with the title "Representative Samples of Mount Sinai'S efforts to Warn Efforts." Can you explain to the jury why we used Mount Sinai rather than simply calling it Doctor Selikoff?

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A. Yes. Because Doctor Selikoff wasn't necessarily the only person involved in some of these activities. Mount Sinai is Doctor Selikoff's base of operations, and I think that would be a second reason.
Q. Now, we've already talked to some extent about the scientific work and referred to his speech and his article in 1967 and '68.
Does this set forth some of the examples but by no means an exhaustive list of some of his other articles relating to synergy?
A. Yes.
Doctor Selikoff was a prolific author. Well over three hundred scientific articles published during the -- in the scope of his career. So it's very, very difficult to

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summarize just in a very few lines but these examples I think would be representative of various presentations and articles, that sort of thing, trying to get the word out to physicians and others in the community.
Q. I think you and I noticed the other evening that we had inadvertently left off his 1979 article with Doctor Hammond replicating his work in the 1968 article. Is that correct?
A. That is correct, yes.
Q. Now, in addition to writing in scientific publications, did he also speak to conferences of scientists?
A. Yes, he did, and, again, we have -- we have various kinds of examples. If I just point to one here in 1978, Doctor Selikoff addressed the Asbestos Education Task Force at the National Cancer Institute in Bethesda, Maryland, and note that representatives from the unions, government and media were present.
Doctor Selikoff made literally hundreds of presentations to various types and kinds during his career and especially during the period when he was focusing on asbestos and synergy.
Q. So this is not only not exhaustive but it's actually a very, very small sample of the kinds of writings and speeches he gave to the scientific community, is that correct?
A. That is correct, yes.
Q. Did he also do work to educate Congress about the risks

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of synergy?
A. Yes, he did.
Q. Can we have slide 67, please? Martin Demonstrative 48.
Are these some examples of the testimony given by Doctor Selikoff and his colleagues to government, legislative institutions?
A. Yes, and, again, without trying to identify each one, I can try to give you a couple of different examples of the kinds of things that he did.
Q. Would you do so?
A. In 1968, Doctor Selikoff appeared before the Congressional Committee on Education and Labor, actually arguing on behalf of what will become the OSHA Occupational Safety and Health Administration, and his testimony was very, very persuasive and influential in moving toward the establishment of that particular body.
Q. May I stop you there for a second? Do you have a slide which is numbered 68 identifying from the transcript of that appearance a specific representation by him about synergy to Congress?

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A. Yes.
This was part of his testimony. I quote, so it is not simply the smoking. It is not simply the asbestos because we had asbestos workers and they didn't die of lung cancer if they didn't smoke cigarettes. It is something peculiar about

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this combination, end quote.
Q. For the record, that's Martin demonstrative number 49.
If we could go back to the slide before, please?
I'm sorry. I interrupted you.
A. I was just going to pick out a second example. Here -- you see in 1974, Doctor Selikoff was corresponding with William Steinfeldt of the New York General Assembly, writing about synergy related issues in trying to inform this particular gentleman and the assembly about this issue because of concerns about getting appropriate Workers Compensation laws through the New York Assembly.
Q. Did Doctor Selikoff and his colleagues also make substantial efforts to get the word out about the risks of synergy to unions and union members?
A. Yes, they did. Yes, they did.
Q. Could I have number 71, please?
Have you collected in a series of, I think it's four slides, some representative examples of those efforts?
A. Yes, I have. And again, I -- there is no reason to read every one of these, but -- I should point out this is a representative sampling. We can see Doctor Selikoff in 1967 addressing the asbestos workers. He will actually address the asbestos workers again in 1972. If I am not mistaken, in 1977 and again in 1982. But Doctor Selikoff did not just focus on the insulators, the asbestos workers union. He gave dozens of

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talks to union groups. My estimate, based on my count, which would be a minimum, is somewhere between forty and forty-five presentations between about 1968 and 1991, and that -- so we have some of those others here. For instance, he addressed the 1969, the AFL/CIO industrial union department conference of labor leaders dealing with health and safety issues. There were more than two hundred fifty representatives of forty-five different unions in attendance at that particular conference.
Then he would go to a specific group. The next one in '69, presentation to the Oil, Chemical and Atomic Workers Union, District Four Council addressing asbestos.
1970, speaking to the Textile Workers Union, Doctor Selikoff had a very close friend with the textile workers and he would interact with them quite often, and we could go on. I think we have actually three -- three more.
Q. Three more is right.
A. Okay.
Q. Let me see if I could just speed it up by pointing out a couple of things?
A. Okay.
Q. I feel like I am back in Catholic grammar school with the pointer.
Chemical workers in 1970, spoke to them?
A. Yes.
Q. ID, is that the Industrial Union Department of the

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AFL/CIO that encompassed a number of unions that you mentioned before?

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A. Yes.
Q. That was a speech he gave in 1971 in New Jersey?
A. Yes.
Q. Then he and his colleagues, Doctors Nicholson and Holaday attended three union conventions over a several day period on the West Coast in 1972 and spoke also, is that correct?
A. Yes.
Q. Then he addressed the Asbestos Workers Union in Las Vegas in 1972. I think you already mentioned that. Is that right?
A. Yes.
Q. Then he and his colleagues, Doctor Hammond and others at Mount Sinai gave a speech to a labor advisory committee of the Environmental Cancer Research Project in 1972 involving thirty-three different union representatives, is that right?
A. That's correct.
Q. May I have the next slide, please?
They also spoke, Doctor Selikoff and his colleagues, spoke to shipyard workers out in Los Angeles in 1973, correct?
A. Yes.
Q. Then they spoke at a three-day national convention of the industrial union of Marine and Shipbuilding Workers in 1974, correct?
A. That is correct.

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Q. 1976, Doctor Selikoff and Doctor Nicholson attended an interunion asbestos committee meeting with respect to multiple unions including the paper workers, the textile workers, Oil, Chemical and Atomic Workers and representatives of the industrial union department, is that correct?
A. Yes, that is correct.
Q. '76, again, they addressed the International Chemical Workers Union. '77, Doctor Selikoff spoke at the twenty-third convention of the Asbestos Workers Union.
Correct?
A. Yes. I had mentioned that one. Yes.
Q. Then in '78, Doctor Selikoff participates in an AFL/CIO job safety and health conference attended by at least eleven hundred delegates from forty unions, is that correct?
A. Yes, that is correct.
Q. Then Doctor Nicholson, his colleague, spoke at a three-day convention of the union of Marine and Shipbuilding Workers and specifically warned about the dangers of synergy in 1978, correct?
A. Yes, that is correct.
Q. Then Doctor Selikoff talked to the roofers union in 1979, and again to the asbestos workers in 1982?
A. Yes. That is correct.
Q. Correct?
A. Yes.

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Q. Those are just some of the examples of speeches he gave to unions, is that a fair summary?
A. That is correct. I don't know how many were listed, fourteen, fifteen, sixteen. My count, at least the ones that I am aware of, that I have seen, as I said, it was somewhere between forty and forty-five, overall, in these kinds of union related presentations.
Q. On your list you also have symposia and conferences?
A. Yes.
Q. What are those?
A. Well, I will have a representative sampling, but Doctor

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Selikoff again went all over the country and made various kinds of presentations to various kinds of groups that would involve, could involve union workers but would go beyond union workers. I think we do have some examples.

Q. Could I have slide number 88, please? This is Martin demonstrative number 67. Are these just a few examples of the conferences and symposia that Doctor Selikoff and his colleagues organized and conducted?

A. Yes.

We have in 1970, a four-day course for physicians, scientists and union members on industrial hygiene, which included the subject of synergy, with OSHA members as the key faculty participants of -- specific conference that was held in New York.

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We have an occupational health hazards course for seventy-five union members, again held in New York. We have twenty-five unions involved including Oil, Chemical and Atomic Workers. The auto workers and the steel workers.

And we have a two-day conference involving various union officials on asbestos exposure.

We have a conference on occupational medicine sponsored at Mount Sinai here in New York. I guess I could read the quote. It states that the combination of asbestos and cigarette smoking greatly increased the risk of lung cancer. So these would be representative examples of many, many conferences that Doctor Selikoff helped organize or participated in.

(Continued on the next page.)

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BY MR. KRAUS:

Q. Now, I want to skip down to the green sheets. What were green sheets?

A. The green sheets were a product of the insulation industry-hygiene research program that Dr. Selikoff founded in 1968 at Mount Sinai Hospital in his environmental resources unit. And these sheets are sort of summaries of issues having to do with asbestos and asbestos exposure.

And these sheets were included in the Asbestos Worker magazine on a quarterly basis, but they were also sent out all over the country. There's a very kind of a long list, mailing list, which included government officials, physicians, scientists, industrial hygienists, various kinds of union leaders and, in some cases, even union workers. So that the green sheets were spread far and wide, is, I guess, what I'm trying to say.

Q. Do we have a quote from an article written by Dr. Selikoff, describing the breadth of the distribution of green sheets?

A. Yes, we do.

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MR. KRAUS: This is Martin Demonstrative Exhibit 57.
BY MR. KRAUS:
Q. This is from an article entitled "Partnership for prevention," published in the Industrial Medicine magazine in April 1970.
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Can you briefly read for the jury what Dr. Selikoff had to say about the distribution of the green sheets?
A. And I quote: "A quarterly report of progress is published, and is sent to each member, to contractors, other union groups, industrial hygienists, educators, physicians and other scientists, and government officials involved in occupational health activities."
Q. Do you have some examples of the message that Dr. Selikoff and his colleagues got out about synergy through the green sheets?
A. Yes, I do.
MR. KRAUS: Martin Demonstrative Exhibit 58.
BY MR. KRAUS:
Q. This is from a green sheet distributed in the winter of 1969; is that correct?
A. Yes, that is correct.
Q. The particular article I want to focus you on is entitled "Cigarettes, asbestos don't mix."
What was the message about the dangers of synergy that was gotten out by that particular article?
A. In this particular article, it can be summarized in the quotation here: "All men increase their risk of developing lung cancer if they regularly smoke cigarettes -- for asbestos workers, this increase is tremendous. We have calculated that an asbestos worker who smokes has ninety-two times the risk of
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dying of lung cancer as compared with a man who neither smokes cigarettes nor works as a pipe coverer."
Q. That ninety-two-times number, does that come from a 1968 article?
A. Yes, it does.
Q. And did Dr. Selikoff and his colleagues, through this article, also give advice to people who quit smoking?
A. Yes, they did. Very regularly, as a matter of fact.
Q. This is one example among many?
A. One among many.
Q. This is from the same article, and what does it say about quitting?
A. I'll read the quotation. It says: "Those who now smoke cigarettes should stop immediately. This is even true if they" -- that is, the workers -- "are retired from the trade."
Q. Let's show the jury one more example of the green-sheet messages about smoking.
This is an article that appeared in the fall 1971 issue of the Insulation and Hygiene Progress Reports.
What did this article have to say about the risks of synergy?
A. This particular article -- I'll read the quotation -- it says: "The answer is that lung cancer is strongly associated with cigarette smoking, especially in asbestos workers. In fact" -- referring back to the 1968 article -- "In fact,
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asbestos workers who smoke run more than ninety times the risk of dying of lung cancer than men who neither smoke cigarettes

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nor work with asbestos do."
Q. Do you know when Dr. Selikoff and his colleagues stopped distributing the green sheets?
A. Yes, they stopped in 1976. They actually, if I recall correctly, published the green sheets for about a seven-year period.
Q. Do you know why they stopped?
A. Yes, I believe the reason that has been given is that the message had become very repetitive. It was out there, it had been delivered. I guess we can say there's no new news here.
Q. Now, let's turn to medical monitoring. We know, from earlier testimony by you and others in this case, that in the late 1960s, that Dr. Selikoff did some hands-on x-rays and medical intervention with members of the insulators' union. Did he do that with members of other unions over the years?
A. Yes, he did.
Q. Did you collect a list of some representative examples of that?
A. Yes, I have compiled a list.
MR. KRAUS: Can we have Number 84, please. This, your Honor, is Martin Demonstrative Exhibit 63.
BY MR. KRAUS:
Q. So, in 1971, you found an example of Dr. Selikoff

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offering to set up a training course for members of the Oil, Chemical and Atomic Workers' Union; correct?
A. That is correct.
Q. Then, in 1972, through his Mount Sinai center, he began a program with the Textile Workers' Union to diagnose asbestos-related illnesses, for purposes of obtaining compensation for union members; is that correct?
A. That's correct.
Q. And then, another example. In 1972, Dr. Selikoff headed an Industrial Union Department environmental-health team sent out to assess the health of members of the Cement, Lime and Gypsum Workers' Union, at their request?
A. That is correct.
Q. For all the ones on your list, you found evidence in the written historical record; is that correct?
A. That is correct. It was based on information that I have obtained in writing.
Q. Then, in 1972, he began medical examinations of over 3,000 members of the Painters' Union. That was funded with grants, totaling nearly $700,000; correct?
A. Yes, that is correct.
Q. 1976, he did work with 359 past and present shipyard workers in the Metal Trades Department?
A. That's correct, yes.
Q. Then, he continued his study with the members of the

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Painters' and Allied Trades Union in 1977, expanded now to over 8500 painters; correct?
A. That is correct.
Q. Could you talk for a minute about this effort in 1976 for nearly a thousand workers at the Electric Boat Division of Groton, Connecticut. That's a fairly famous study, isn't it?
A. That's right. Dr. Selikoff was very concerned about shipyard workers and going back to the Second World War and exposure in shipbuilding, with all the asbestos being sprayed in ships as a fire retardant, along with other reasons.
He was asked -- this is the regional Metal Trades

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Department in Connecticut -- to come in and to study close to 1,000 workers and, by studying, -- that is, to give them physical examinations, chest x-rays, whatever -- to determine, in an overall sense, besides trying to bring the individuals up to date on their health, to give an overall sense of how bad the asbestos exposure really was. And this will lead to a great deal of action on the part of the National Metal Trades Department in '77 and beyond, to get out the word again, as much as possible, about the problems of asbestos exposure, including synergy.

Q. Then, in 1978, we have some further reports of his continuing work with the Painters' and Allied Trades Association?

A. That's correct.

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Q. In 1978, he worked with -- or a Dr. Polakoff conducted an asbestos medical-surveillance program consisting of x-rays and pulmonary-function tests for nearly 60,000 shipyard workers. That was on the West Coast?

A. Yes.

Q. What was the relationship between Dr. Polakoff and Dr. Selikoff and his group?

A. Dr. Selikoff was an individual of enormous energy. He couldn't do it all. He developed a working relationship with Dr. Phillip Polakoff on the West Coast, and Polakoff took over and did a number of these kind of medical-surveillance studies in the late '70s into the early 80's through his WIEOS Institute, which stands for the Western Institute of Environmental and Occupational Sciences.

Q. In 1984, you found evidence of a study of 142 Norfolk Navy Yard shipyard workers and ninety wives?

A. Yes.

Q. Can you tell the jury what Dr. Selikoff had to say about the smoking history that he found there?

A. In 1984?

Q. In 1984.

A. Right. I'm trying to, looking at the quotation. One quarter never having smoked regularly, and about half with a history of smoking, but having ceased. Approximately one-fifth were still smoking cigarettes. In other words, a

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number had quit.

Q. Then, in 1986, he had another $750,000 contract with Sheet Metal Workers to do further medical screenings. Is that what the 1986 entry shows?

A. Yes. These screenings were actually done all over the United States. Dr. Selikoff actually had quite an extensive staff by this point, and you can see studies being conducted in Florida, Texas, Canada, Los Angeles, Illinois, New York and New Jersey. So, this was quite an extensive program he had with the Sheet Metal Workers.

Q. Then, your last entry is, 1991, Dr. Selikoff and others in Mount Sinai conducted an extensive medical-monitoring program, screening members of the Carpenters Union.

With respect to Dr. Selikoff, what is so significant about the 1991 date?

A. Dr. Selikoff, basically -- well, he retired in 1987, became an emeritus professor at Mount Sinai, and he will continue his work almost up to the day of his death. Dr. Selikoff passed away in 1992, but he was very, very committed to union workers and their good health. So, he

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simply continues these studies as long as he is physically able to keep himself going. I think that's a very impressive achievement.
Q. Professor Harris told this jury, during his testimony, during plaintiffs' case, that Dr. Selikoff's budget for his
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educational efforts was in the neighborhood of $350,000. We've already seen a number of 700, 750,000 dollars numbers. In addition to those in your research, did you run across funding provided to Dr. Selikoff by such organizations as the American Cancer Society?
A. Yes, I did.
Q. How much were they providing to him?
A. Dr. Selikoff received a grant for $1 million in 1971 from the American Cancer Society, which was actually 1/25 of their whole research budget for that particular year, and he will continue to receive grants during the 1970s from the ACS, the American Cancer Society. So, they will be one of the major funding sources. And in addition, Dr. Selikoff did receive an occasional grant from various federal agencies, as well.
Q. Obviously, Dr. Selikoff had a number of cautionary things to say about smoking, particularly for asbestos workers. Did he ever take a public stand on whether or not smoking ought to be banned?
A. Yes, he did.
Q. Could you display Number 90, please.
MR. KRAUS: This, your Honor, is from the Meet the Press segment that Mr. Wagner showed during Dr. Viscusi's testimony, the same segment.
(Tape played.)
(Tape stops.)
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BY MR. KRAUS:
Q. Let's move on, then, from Dr. Selikoff to the role of government in the effort to get out the word about the dangers of synergy. Did government play a role?
A. Yes, it did.
Q. How would you describe, in general, the role of government?
A. Well, the government will provide a number of publications, and will also be involved in putting together various kinds of -- I guess we could say there would be a major campaign warning about the dangers of asbestos in 1978. And the government works very, very diligently to spread the word as far and wide as possible.
Q. Have you prepared a Demonstrative, listing some representative examples of governmental efforts?
A. Yes, I have.
MR. KRAUS: This is Martin Demonstrative Exhibit 68.
BY MR. KRAUS:
Q. If I could, to speed things along, Dr. Martin, could you just list, for the benefit of the jury, some of the government agencies or organizations that spread the word?
A. We have the Department of the Navy. Obviously, because of shipbuilding and ship construction, naval war vessels of various types and kinds.
The Department of Labor, trying to share information
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with working people across the United States. DOL.
NIOSH, the National Institute of Occupational Safety

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and Health, putting out various kinds of publications.
And the Health, Education and Welfare agency, we have examples there.
We have the National Cancer Institute, which will be involved in a variety of activities with respect to questions -- health questions associated with synergy.
And then, we have NIOSH and then OSHA, Occupational Safety and Health administration, which we've mentioned OSHA before.
Q. Did each of these government organizations make multiple efforts to get the word out about the dangers of synergy?
A. Yes, they did.
Q. Let's show just a few examples of those efforts.
MR. KRAUS: Number 93, please.
BY MR. KRAUS:
Q. This is a 1972 publication by the Department of the Navy, an article entitled "Asbestos dust control," from the Safety Review publication.
What is the significance of this publication?
A. This naval publication will speak, and it says in the quotation: "During the 1970s, noted researchers published sound statistical evidence for an association among cigarette smoking, asbestos workers, and cancer of the lung."

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It is actually putting out a warning to the effect that individuals who are involved in ship construction should be aware of the hazards of both.
Q. You testified earlier that OSHA was formed in or around 1971. From the very beginning of its existence, did OSHA issue warnings about the dangers of synergy?
A. Yes, OSHA did, yes.
Q. This is a 1972 article in a publication by OSHA, entitled "Asbestos: Airborne danger."
What did that publication have to say about the dangers of synergy?
A. Well, in this OSHA publication, a pamphlet, the quotation is: "The peril of lung cancer from asbestos exposure is increased by smoking. Asbestos workers who smoke have ninety times the incidence of lung cancer."
That point is being made here that individuals who perhaps are having contact with asbestos should consider not smoking.
MR. KRAUS: For the record, this is Martin Demonstrative Number 70.
BY MR. KRAUS:
Q. To make this a little more readable, this next slide, we have a copy of the actual poster; correct?
A. Yes.
Q. And we've highlighted the particular quote about snyergy

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on that poster; right?
A. Yes.
Q. Now, to make it a little easier for the jury, can you read it from the screen?
A. Yes, the highlighted quote says: "If you work with asbestos and smoke, too, your chances of getting lung cancer are increased because of 'cooperation' between the asbestos and cigarette smoke, called synergism."
This kind of a poster, although it was developed with the Oil, Chemical and Atomic Workers' Union, would be posted in plants, the OCAW-related plants across the United States,

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and, again, it would be the kind of material that's being made available to inform individuals and to warn individuals about the dangers of smoking.
Q. Just to cover one more of the agencies, do we have an example of a National Cancer Institute poster?
MR. KRAUS: Number 99, please.
A. This is a desk reference for communicators, the bulky pamphlet that is sent out to all types of different individuals to try to spread the word through the labor community about the dangers of asbestos exposure. And here, we have: What is the role of cigarette smoking? Asbestos workers who smoke have a risk of lung cancer eight times greater than the risk of smokers in the general population.
Note, we're comparing smokers in the population
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here. Normally, the ninety-two times relates to nonsmokers in the general population. This is actually the correct figure for smokers compared to asbestos workers and smokers.
Q. Earlier during Surgeon General Richmond's testimony, the jury heard about the asbestos-awareness campaign in 1978. Have you run across that in your research?
A. Yes, I did.
Q. How would you characterize that?
A. I would say it was a fairly comprehensive effort to get the word out, as far and as wide as possible, about questions having to do with asbestos exposure, including synergy.
Q. Was there a written plan for the asbestos-awareness campaign?
A. Yes, there was.
MR. KRAUS: For the record, your Honor, I think that's in evidence as Defendant's Exhibit GN-100498.
BY MR. KRAUS:
Q. Have you prepared some charts listing some of the components of the campaign?
A. Yes, I have.
MR. KRAUS: 100, please.
BY MR. KRAUS:
Q. Can you tell the jury how you prepared this particular chart?
A. Yes. This is based on the working plan, and this is
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meant to be a summary of the kinds of activities that were encompassed in the asbestos-awareness plan. We see mass-media articles; that is, get information out in newspapers and other kinds of print-media outlets.
Warnings to physicians. There will be a general letter that will go out to every physician in the United States.
Various kinds of government publications, that will address questions of asbestos exposure and with respect to synergy.
And then, finally, public-service announcements. The ultimate objective here is to have employers eliminate potential exposures in the workplace; workers seek health care and stop smoking.
Q. I think sometimes in this case we have a tendency to focus a lot on, or exclusively on synergy. Would it be fair to say that there were two main messages; to seek health care, and to stop smoking?
A. Yes. And that is characteristic of the overall proposal and work plan.

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Q. How was the campaign kicked off?
A. It was kicked off with a -- I guess what you would call a press gathering. And that involved Secretary Joseph Califano. And so, that was sort of the first activity.
MR. KRAUS: Number 104, please.
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BY MR. KRAUS:
Q. This is Martin Demonstrative Exhibit 80.
Is this a quote from the press release by Secretary Califano?
A. Yes.
Q. Did he, in that press release, warn about the dangers of synergy?
A. Yes, he did.
"The Surgeon General" -- I quote -- "advises me that a person who smokes and has been exposed to asbestos faces a greater risk of dying from a respiratory ailment."
Q. And just in case anybody missed it, on the second page, did he give another warning about the dangers of synergy?
A. Yes, he did.
Q. What did he say there?
A. "Lung cancer. However, a smoker who has been exposed to asbestos is up to ninety times more likely to incur lung cancer than a nonsmoker who has not been exposed."
Q. Did Surgeon General Richmond also send out, at the same time or actually a day before this press release, an advisory to all 400,000 physicians in the United States?
A. Yes, he did.
MR. KRAUS: Could I have number 102, please.
This is Martin Demonstrative Exhibit 78.
BY MR. KRAUS:
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Q. That's a picture of Surgeon General Richmond when he was a little younger than when he appeared here.
Can we go to the next slide, please.
In that warning to -- that advisory notice to all 400,000 physicians, did he specifically address the dangers of synergy?
A. Yes, he did.
Q. You don't have to read all of it; can you read the most important part?
A. Well, what he says here is, under "Smoking cessation":
"Discontinuation of smoking is an important step in the control of the sequelae or effect of asbestosis, and will assist in the prevention of lung cancer."
I think that is the core message there.
Q. What is your understanding about why Surgeon General Richmond sent this message to all of the physicians in the United States?
A. He wanted to certainly get the word out to the physicians. But in turn, he knew that the physicians would be in primary contact with workers, and he wanted to make sure that they would be attentive to the workers' needs who may well have been exposed to asbestos.
Q. Now, in addition to this notice and the Secretary Califano press release, did the NCI distribute warnings to stores throughout the United States?
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A. Yes. The NCI, the National Cancer Institute, did develop material.

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MR. KRAUS: Kraus 106, please.
This is Martin Demonstrative Number 82.
BY MR. KRAUS:
Q. First of all, before we go to the message that was given, how was this pamphlet distributed?
A. Well, it was distributed basically through supermarkets and other kinds -- in convenience stores, I guess would be the second category. And it was distributed to -- I don't think it is stated quite correctly. I think it's 1.2 million copies were distributed to stores throughout the United States.
Q. What message did this pamphlet say?
A. Well, it does address the synergistic relationship: "How does smoking affect risk?" "Many studies have shown that the combination of smoking and asbestos exposure is particularly hazardous."
Q. You talked earlier also about public-service announcements over the radio and television as part of the campaign. Did they address smoking?
A. Yes, they did.
MR. KRAUS: Kraus 107, please.
Which is Martin Demonstrative 83.
BY MR. KRAUS:
Q. What is this?
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A. On the left is the actual radio script. There's a little bit of handwriting on it. What the public-service announcement says is, the advisory here going out of the radio waves is: Even if you feel good, check with your doctor, stop smoking, and get prompt medical treatment for respiratory illness.
Q. So, this got across both messages, stopping smoking and getting medical treatment; correct?
A. That's correct.
Q. One of the other things you mentioned earlier was a notice that was sent to Social Security recipients and other people who received federal checks?
A. Yes.
Q. Do you have a copy of what that notice actually said?
A. Yes.
MR. KRAUS: Number 108.
This is Martin Demonstrative 84, your Honor.
BY MR. KRAUS:
Q. Is this a copy of the notice that was sent out?
A. Yes, it is. And the highlighted portions reads: "Don't smoke. Scientists know that cigarette smoking multiples the risk of lung cancer and can aggravate asbestosis. Studies show that quitting smoking will reduce the risk."
Q. Was that sent to just a few people, or a lot of people?
A. That was actually sent to about one out of every four
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adult Americans living in 1978.
MR. KRAUS: Number 110, please.
Your Honor, this is Martin Demonstrative Exhibit 86.
BY MR. KRAUS:
Q. Can you walk the jury through the people, the total numbers of people to whom that particular notice was sent?
A. The estimate is that in the late 1970s, there were about 160 million adult Americans, that is, over the age of eighteen, eighteen or over. And the notice totaled forty million copies were sent out. Thirty million went to Social Security recipients with their October 3, 1987 checks.

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Q. You said '87; did you mean '78?
A. I'm sorry, '87, I just reversed the numbers. A 1978 check.
And another seven million Social Security recipients, the bottom number, received notice with their January 1979 annual statements. And in this case, these seven million were individuals doing direct depositing, so they were not receiving checks directly from the government.
Then, the other two numbers involve federal employees, retired federal employees. The first group received -- 1.6 million received the notification with their November 1978 checks, and then 1.4 million received -- again, these were direct depositors -- received the notification with their premium billings at the end of 1978.

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Q. Let's turn now to labor unions. Did the unions also get involved in advising their members about the dangers of synergy?
A. Yes, they did.
Q. Have you collected some representative examples of those warnings issued by unions?
A. Yes, I have.
Q. Were those warnings an isolated event or was it a recurring theme that you found throughout your research?
A. It was very much a recurring theme.
Q. Were those warnings, in your judgment, clear and unambiguous?
A. They were very clear, direct and straightforward, yes.
Q. Could I have number 124, please.
This is Martin demonstrative exhibit 98.
Could you explain to the jury basically what you did in collecting examples of union warnings.
A. Yes. What I was trying to do was go through as many union publications as possible within a limited time frame, and try to see what was being stated and how specifically it was being stated, and that's really what these various examples from various union groups represent.
Q. So here on this first page we have Ohio BCTD, Building Constructions and Trade?
A. That's right. The Ohio department -- Ohio Division.

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Q. Glass Workers, Longshoremen's Union, and the United Association. United Association is another union?
A. Pipefitters and plumbers.
Q. The next page we have molders, ironworkers, paper workers, OCAW, International Brotherhood of Electrical Workers?
A. That's correct, yes.
Q. That's not the end, is it, we have another page?
A. Yes.
Q. Another IBEW, asbestos workers. Those are the insulation workers we talked about earlier?
A. Yes.
Q. Textile workers?
A. Yes.
Q. Another IBEW. Next page, please. Boiler makers, chemical workers, carpenters, a second chemical workers example, correct?
A. Yes, that's correct.
Q. Is there one more? Communications workers, ironworkers, two from the ironworkers, the operating engineers as well.

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Is this a complete listing of all of the warnings that you found or even all of the unions that you found that gave warnings?
A. No, it's not.
Q. How would you describe this listing?
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A. This is meant to be representative of a whole group of articles that I was able to review from various sources.
As I recall, I think it was about three hundred articles in total that I have reviewed, and I think there was some eighty to ninety which mentioned -- which specifically mentioned synergy.
Q. I want to point out just a few specific examples. Can I have number 129, please. . This is Martin demonstrative exhibit 103.
This is from 1967. What is significant about the early date of this particular notification?
A. This article appeared within a very few weeks of Dr. Selikoff's presentation about synergy to the American Medical Association, so I think that it demonstrates, I think, a key point.
There is a great deal of interest in this. This is not an issue that is being forced on people, this is an issue that individuals are very interested in because it obviously has to do with their health.
Here we have the statement that "all people incur a great risk of lung cancer if they smoke cigarettes. For asbestos workers the increase in risk is tremendous," they say. Then the final point: "Those who do smoke should stop immediately." This is within a few weeks of Selikoff's first presentation.
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Q. This is Martin demonstrative 104. I think the jury has seen it before, the cartoon, New flip-top box for smokers, with a coffin.
Do you find that significant?
A. Yes. A direct relationship to what we talked about before, coffin nails, and the association of cigarettes with coffins, the association of cigarettes then with death, and that is what is being featured here.
Again, this is very, very early -- this is in July, within a month of Dr. Selikoff's presentation to the American Medical Association, we have the word being spread among glass workers about the possible dangerous aspects of the synergistic effect.
Q. We've seen reference on a number of occasions this morning to the Oil, Chemical and Atomic Workers Union. Was that union specifically extensively involved in getting out the message about synergy and the dangers of smoking?
A. Yes, it was.
Q. Was there a particular individual in OCAW who was heavily involved in that?
A. Yes. There was an individual by the name of Anthony Massochi, and Mr. Massochi developed a very early and close friendship with Dr. Selikoff and worked with him a full variety of ways during the 1970's and into the 1980's to develop programs that would allow for the distribution of
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information relating to questions about asbestos exposure and also synergy.

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Q. He was one of the participants on that Meet the Press interview in 1978; is that correct?
A. Yes. Actually, he and Dr. Selikoff appeared together at conferences, but they were together, yes, in the Meet the Press presentation in 1978.
Q. Let's show the jury an example, slide 136, of an OCAW warning. This is Martin demonstrative exhibit 110.
Now, at the top of the page, Dr. Martin, it says: "Thank you for not smoking" and it may be a little hard to read on the version on the screen in front of you. I will represent to you that right below that it says, "American Cancer Society."
Was it common or uncommon for the American Cancer Society to work with unions to get out the message about the dangers of smoking?
A. It was very, very common, and it goes back into the early 1960s, the first joint program of trying to get the word out to union members about problems associated with smoking.
This would even be before the synergy issue began in a major national campaign in 1964, and there is going to be an on-going, very close relationship between the American Cancer Society and a whole number of unions during the seventies, eighties and into the nineties.

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Q. And this is in 1974, again, and what does it say at the bottom of the page, can you read that?
A. It says: "Remember, nicotine is addictive." I can't read it.
Q. "Promoters and makers of cigarettes are society's biggest pushers."
Is this an example of what you testified earlier about the general awareness of the fact that it could be very difficult to quit smoking once begun?
A. Yes, it is.
Q. Now, did this also speak directly to synergy?
A. Yes. And the quotation highlighted says: "Asbestos workers who smoke have about one hundred times the chance of developing lung cancer than people who don't smoke or work with asbestos."
Q. So they have raised the number from 92 to 100?
A. Yes. And I think that makes it perhaps even more focused or sharper yet.
Q. Now, in addition to publications to OCAW members, did OCAW also get involved in trying to educate other unions about the dangers of synergy?
A. Yes. OCAW was very active in trying to spread word about asbestos dangers far and wide beyond the confines of their particular union.
Q. Do you have an example of a slide show that Mr. Massochi

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and OCAW put together to address the dangers of asbestos and synergy?
A. Yes, I do. I should mention that Dr. Selikoff served as an advisor in the development of this slide show.
Q. That is number 137, please. This is Martin demonstrative 111.
What did this slide show have to say about the dangers of synergy?
A. The overall show is Asbestos, Fighting a Killer, and the quotation here is: "If you're exposed to toxic substances like asbestos on your job, smoking can make exposure more

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dangerous."
I would add that the slide show, the idea is to get individuals together in the union hall, show the slide show and then to have a discussion about the issues that are being raised by the slide show, and that this was done, from what I've been able to tell, in lots of different locations.
The slide show per se was underwritten by an insurance company and it was literally given away to lots of different unions so long as those unions said that they would actually use it and try to inform their workers about the dangers involved.
Q. We talked about the Insulators Union. Did they continue to spread the message that synergy was dangerous, in the 1970's?
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A. Yes, they did .
Q. Could you give me number 141, please. This is Martin demonstrative exhibit 115.
Is this an example of a cartoon -- I'm not sure exactly how you would describe this -- from the Asbestos Worker magazine?
A. Yes. This is -- well, I guess I would call it a cartoon drawing. We can see the skeleton coming out of the cigarette. The message is very direct. "Cigarettes will kill you." And here we have a message about synergy. "All of us know of the serious health risk encountered by the average smoker, but asbestos workers especially must refrain from tobacco use, particularly cigarettes."
Q. Can I have the next slide, please. This is Martin demonstrative exhibit 160.
Is this another example of a message from the Asbestos Worker magazine?
A. Yes. Here we have, I guess we have a skull and cross bones, another symbol of death. "Cigarettes will kill you" is the message. "Studies have concluded that asbestos workers who smoke are almost one hundred times more likely to develop lung cancer and other respiratory illnesses."
Q. Over the breadth of messages delivered by unions to their workers about the dangers of synergy, did you find that the message was straightforward?
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A. Yes, I did.
Q. Did you find any examples in any of the union publications or other documents that you read where a union reported a denial of synergy by the tobacco companies or the Tobacco Institute?
A. No, I did not.
Q. Did you find any instance in any of the documents you read where a denial of synergy was reported by any of the unions or other entities that you studied?
A. No, I did not.
Q. In fact, in the union publications, in particular, did you find any example where any of the unions reported the tobacco companies or the Tobacco Institute's position on general causation, that is that it was not yet fully proven?
A. I'm trying to think whether I have an example. Nothing is coming to mind.
Q. Let's turn to the media. Did the newspapers and magazines also report on the dangers of synergy?
A. Yes, they did.
Q. And have you prepared a summary chart of some examples of

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that?
A. Yes, I have.
Q. Can I have 114, please.
Now, this is the first of three charts of media examples. Is this an exhaustive list or again a
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representative list?
A. This is meant to be a representative list. We have various kinds of sources: The New York Post, Wall Street Journal, Reader's Digest Magazine, the New Yorker Magazine,, and it is meant to be a representative list of various kinds of print publications, whether it be a newspaper or magazine form.
MR. KRAUS: This is Martin demonstrative exhibit 89. The next page, please.
Q. Here we have further examples from the Wall Street Journal, the Long Beach Press Telegram, the New York Times and Los Angeles Times, correct?
A. Yes, that's correct.
Q. One more page, please. Then some more examples from the New York Post and Newsweek?
A. Newsweek, yes.
Q. Let's just look at a couple of particular examples. Could I have number 117, please. This is Martin demonstrative exhibit 92.
A. This is a 1968 article in the Wall Street Journal, and I quote: "The most chilling statistic is that asbestos workers who are cigarette smokers have been found to die of all types of lung cancer at a rate 92 times that of nonsmokers in the general population."
This is in direct reference to Dr. Selikoff's article
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which has just appeared in the Journal of the American Medical Association.
Q. In fact, was his speech earlier reported in 1967?
Could I have the one before it, please. I missed it.
But, in any event, was the speech reported in both the Wall Street Journal and the New York Post?
A. Yes, it was.
Q. We have here the Long Beach Press Telegram, also in 1968, reporting on the dangers of synergy. Is that more of a local newspaper than a national newspaper?
A. Yes. Long Beach being contiguous to Los Angeles, California, and this is a paper, a local paper, but with a fairly sizable circulation, over one hundred thousand.
Again, it's delivering the message about what has been found, and that "Asbestos insulation workers," and I'm quoting, "as a group, have a high risk of dying of lung cancer. This has been known for some time. But new research shows that if asbestos workers also smoke cigarettes, they are 92 times as likely to die of lung cancer as men who neither work with asbestos nor smoke."
Q. Did Readers Digest also report on synergy?
A. Yes, it did.
Q. 120, please.
A. This is an article entitled: "More bad news for
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smokers." It refers to Dr. Selikoff's recent study of 370 asbestos workers which showed lung cancer among smokers was

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much more prevalent than would be expected in a normal male smoking population.
Q. By 1969, the circulation of Readers Digest was up to almost 18 million?
A. That is correct, it is starting to peak at that particular point in time.
Q. If we go we go later into the 1970s, the asbestos awareness campaign gets reported in the media?
A. Yes.
Q. Can I have 122, please. This is Martin demonstrative exhibit 97. This is a 1978 article in Newsweek, entitled "The Asbestos Peril." What did Newsweek report at that time?
A. It reports that "perhaps the most serious health risk for asbestos workers is the synergistic effect of cigarette smoking and asbestos exposure."
This is pointed out in an article devoted to the overall asbestos awareness campaign of 1978.
Q. Let's turn to public health organizations, which are also on your original chart.
Did the public health organizations, like the American Cancer Society, the American Lung Association, and the like, get involved in getting out the word about synergy?

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A. Yes, they did.
Q. And can you give the jury some examples of such organizations who got involved.
A. Yes. Certainly, the American Cancer Society, the American Lung Association. These would be the kinds of agencies which were active in trying to get the word out.
Q. Have you prepared some charts summarizing some representative examples?
A. Yes, I have.
Q. Let's try 152.
Is this a set of examples that you put together based upon your research?
A. Yes, it is.
Q. If we look at American Lung Association, there it refers to a quote from Dr. Selikoff about the matter of the explosive combination, as he termed it, of inhaling asbestos dust and smoking cigarettes.
That is a phraseology that Dr. Selikoff used repeatedly, referring to "explosive combination"?
A. Yes, it is. The word "synergy" will only come into use over a period of time, and Dr. Selikoff uses this kind of a metaphor, referring to explosive or really a dynamic or exponential, whatever kind of term you want to use, and he does use that quite regularly and very dramatically to establish his point.

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Q. Then we have two examples from the White Lung Association.
A. Yes.
Q. Can we have the next slide, please.
Several more examples from the White Lung Association. Then from the American Lung Association. Correct?
A. Yes. That is correct.
Q. There's one more slide, please.
We have the Workplace Health Fund warning about synergy, and then down at the bottom we have Today's Health.

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What was Today's Health?
A. Today's Health is a, I guess what we can say, a more popular magazine, more popularly based emanating from the American Medical Association. It's meant more for the general reader than, say, JAMA, the Journal of the American Medical Association.
Q. As early as 1970, did Today's Health get out the message about the dangers of synergy?
A. Yes. And this quotation in essence restates the 92 times figure, and that's the point of this particular story.
Q. You mentioned earlier in your testimony an organization known as the Western Institute for Occupational and Environmental Safety, known by the acronym WIOES?
A. Yes.

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Q. Can you briefly sprain to the jury what the origin of WIOES was.
A. WIOES came into being in about 1977 for two fundamental reasons. First of all, Dr. Selikoff had so much activity, he had a very hard time covering the West Coast with his medical monitoring studies, so Dr. Polakoff would really take over from him and conduct those studies, but Dr. Polakoff have in turn developed a very strong working relationship with the Metal Trades Department of the AFL-CIO, and the Metal Trades Department would help underwrite a lot of his medical surveillance or medical monitoring studies that he will be doing in the late seventies into the early eighties.
Q. Have you prepared two slides summarizing the extensive efforts of WIOES to get out the word about synergy?
A. Yes, I have.
Q. Can I have 155, please.
Without reading each and every one of them can you just walk the jury through quickly what this slides shows.
A. Yes. First of all, we have the beginning of this what's called the Bay Area Asbestos Surveillance Project.
This is what will become a study of -- go down to the next screen -- 2300 workers, in terms of what, perhaps, damage has been done to them because of asbestos exposure, and this will form the basis for putting out warnings.
A whole series of pamphlets will come out of this to

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send out to workers to warn them about the dangers of asbestos exposure, including synergy related issues.
And then we have Dr. Polakoff attending a meeting and solidifying his working relationship with the Metal Trades Department of the AFL-CIO. Again, they are helping to underwrite his work along with the National Cancer Institute and some other agencies.
That's what these examples are all about, Dr. Polakoff making presentations at gatherings of these union leaders.
(Continued next page)

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EXAMINATION CONTINUES
BY MR. KRAUS:
Q. Could I have the next slide, please?
Are these some further examples going into the early 1980s of WIOES' work?
A. Yes.
Here we have -- we are looking at some of their publications that were distributed far and wide. Asbestos in the workplace, 1980. Again in 1980, work and health. Inseparable in the eighties. That's not a publication. I'm sorry. That is a major health related conference involving union leaders, government officials, physicians, and others in San Francisco. Doctor Selikoff participated in this program as well as Doctor Polakoff, and these, again, are representative of the kind of activities that WIOES sponsors.
Q. Does WIOES also try and distribute pamphlets and cartoons to get the message across?
A. Yes.
Q. Could I have 161, please?
This is Martin Demonstrative Exhibit 134. It is a little hard to read in the upper left-hand corner. But it is entitled "Asbestos Health Hints, Asbestos and Smoking Don't Mix." What was the message of this cartoon?
A. This is actually a cartoon pamphlet. The message here is about as direct as it can get. That is, it says if you don't
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smoke now, don't start. If you do smoke, quit.
Q. Let's switch gears now to Johns-Manville. Did there come a time when Johns-Manville finally issued its own warnings about the dangers of asbestos exposure and synergy?
A. Yes.
Q. What was Manville's position on synergy?
A. Manville's position on synergy was that the relationship was certainly there and Manville will proceed to actually order all stop -- stopping of smoking in the workplace.
Q. Did Manville take public positions in writing about the dangers of synergy?
A. Yes.
Q. Could I have 164, please, which is Martin Demonstrative 137.
This is from the Manville 1976 annual report, correct?
A. Yes, that is correct.
Q. This refers to the Selikoff study showing that smoking asbestos workers have a ninety-two times greater risk than -- this is actually says greater than asbestos workers who didn't smoke. That's not a correct representation of what Doctor Selikoff said, is it?
A. No, that is not. The figure would be -- I think eight times in this case, but that is a bit of a misrepresentation there.
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Q. Can we have the next slide? This is Martin Demonstrative 138.

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This is a page from the John Manville news reporting what Doctor Paul Kotin, the jury saw his deposition, had to say. What position did Doctor Kotin take on behalf of Johns Manville?
A. His position is highlighted here. That is, lung cancer as an asbestos related disease would not be a problem were it not for cigarette smoking.
Q. Is that an accurate representation about what Doctor Selikoff found in his 1968 and '79 studies?
A. No, it is not.
Q. Did Doctor Selikoff find in those studies that asbestos alone had a heightened relative risk for lung cancer?
A. Yes. Approximately, I believe, the number is five times.
Q. Now, you mentioned a moment ago the smoking ban question and there has been some testimony in this case about a smoking ban dispute that arose at a Denison, Texas plant of Johns-Manville.
A. Yes.
Q. Have you done research into that dispute?
A. Yes, I have.
Q. What kinds of documents have you reviewed?
A. In the case of the Denison plant, I reviewed documents that were made available by the plaintiffs in this case.
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Q. Did they include briefs and arbitration records and correspondence arising out of that dispute?
A. Yes, they did.
Q. Can you tell the jury how that dispute arose?
A. Yes.
The Denison, Texas disputes, Denison being a town up on the Texas, Oklahoma border, really arose out of labor negotiations. There was a contract signed with the -- with the local machinist union representing the workers at the Denison plant toward the end of 1975.
About two months later, as I recall, it is about February of 1976, Johns-Manville announced sort of a unilateral, we are going to ban smoking altogether in the plant. This upset the workers because they felt that such issues should --
THE COURT: No. You don't know what upset the workers.
Q. Do you know from reading the review of the record what the workers stated about the source of their concern?
A. The workers stated that they were concerned about violating the collective bargaining agreement that they had established.
Q. Was this concern about the sanctity of collective bargaining unique to the Denison, Texas plant or is it something common to the union movement in this country?
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A. It is common to the union movement in the country.
Q. Can you briefly explain that for the jury to put it in context?
A. Yes.
Until modern unions had collective bargaining, which will come into existence in 1935 through the National Labor Relations Act, they had a very, very difficult time standing up to management on issues having to do with the workplace, having to do with wages, whatever it might be.
Once you have collective bargaining certified and recognized, this makes it possible for unions to actually

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fully represent their workers at particular plants and that is indeed what is involved here.
Q. In the Denison, Texas situation, who initiated the original grievance?
A. The original grievance in Denison came after a worker was disciplined for smoking. So the workers actually initiated the grievance, said they wanted to be heard on the particular issue about imposing the smoking ban on them.
Q. Is there any evidence in the written record that you reviewed that any tobacco company or the Tobacco Institute or any of their representatives played any role whatsoever in the initiation of that grievance?
A. No, there was not.
Q. Did Johns Manville reject the grievance?
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A. Yes, in May of 1976 the plant manager heard the grievance and rejected it.
Q. Did the union then go on to initiate an arbitration under the collective bargaining agreement?
A. Yes, they did.
Q. Is there any evidence that you are aware of in the written record that any tobacco company or the Tobacco Institute or any of their representatives played any role in the initiation of that arbitration?
A. No, there is not.
Q. Have you reviewed the arbitration hearing transcript?
A. Yes, I have.
Q. Did any representative of the tobacco companies or the Tobacco Institute play any role whatsoever in that arbitration hearing?
A. No, they did not.
Q. Did the union take the position in that arbitration that smoking was not dangerous to your health?
A. The union took the position that smoking was dangerous to your health, saying that that wasn't the issue that was at hand. The issue was really the matter of collective bargaining on the point of imposing a smoking ban without having it worked out contractually.
Q. In fact, to avoid any misunderstanding on that, did the union representative write a letter to the local newspaper to
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make it clear that the union understood the health risks associated with smoking and asbestos exposure?
A. Yes.
The union -- the individual in question was the business representative of the union, a Mr. Angelo Weda, and he did write the local newspaper and said he wanted to make sure that community understood that this was not an issue about smoking. We were aware of the dangers of smoking. He mentioned synergy and he said, again, the issue goes back to collective bargaining and our rights to maintain collective bargaining.
Q. Who won the arbitration?
A. The workers won the arbitration.
Q. Did Johns-Manville accept that result?
A. No, they did not.
Q. Did Johns-Manville then appeal that ruling to the federal district court in Texas?
A. Yes, they did.
Q. Did the machinist's union -- that was the union in Denison, Texas?

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A. Yes, it was.
Q. Did they then retain an attorney?
A. Yes, they did. Gentleman by the name of Don Crowder.
Q. Is there any evidence in the records that you reviewed that Mr. Crowder had any relationship with any of the tobacco
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companies or the Tobacco Institute at that time?
A. No, he did not.
Q. Did he seek help from other people in order to write a brief and represent the machinist's union in this arbitration?
A. Yes, he did.
Q. From whom?
A. He sought help in a variety of sources, individual law professor at Southern Methodist University. He contacted a -- a lawyer well versed in collective bargaining in New Jersey. He collected -- he was in contact with a --
MR. WESTBROOK: Excuse me. We are getting very far afield from a historian. Now he is talking about what an attorney is doing.
THE COURT: Sustained.
Q. Did you see written evidence in correspondence of all of these contacts with other individuals by Mr. Crowder?
A. Yes, I did.
Q. Of the individuals listed so far, the SMU professor, the New Jersey lawyer and I guess an entity, the research organization, was there any evidence in the written record that you reviewed that any of them had any affiliation with the tobacco company or the Tobacco Institute?
A. In this particular instance, yes.
Q. Which one?
A. A gentleman by the name of Stanley Temko.
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Q. So he is in addition to the three that I had just described?
A. Yes.
Q. According to the written records that you reviewed, did Mr. Crowder reach out to the Tobacco Institute?
A. Yes.
Q. Mr. Temko was a lawyer at a law firm that represented the Tobacco Institute, is that what the records show?
A. That is correct, yes.
Q. What kind of assistance did Mr. Temko provide to Mr. Crowder?
A. Mr. Temko prepared a brief for presentation to the Court.
Q. Did that brief address the health effects of smoking in any way?
MR. WESTBROOK: Objection, Your Honor, as to what a legal brief showed.
THE COURT: Sustained.
Q. Have you read the brief?
A. Yes, I have.
Q. Did you find any example in that brief of any discussion of the health effects of smoking specifically?
MR. WESTBROOK: Objection, Your Honor.
THE COURT: Sustained.
Q. What issues did the brief address?
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MR. WESTBROOK: Objection, Your Honor.
THE COURT: Sustained.

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Q. Ultimately, did the union prevail in the district court?
A. Yes, it did.
Q. Did Johns Manville accept that decision?
A. No, they did not.
Q. Did they appeal to the Fifth Circuit Court of Appeals?
MR. WESTBROOK: Objection, Your Honor, as to the course of litigation from this historian.
MR. KRAUS: Your Honor, it's all evidenced in written record and documents.
MR. WESTBROOK: That's my point, Your Honor.
THE COURT: Sustained.
Q. Do you know from your review of the written records whether Mr. Temko on behalf of the Tobacco Institute played any further role in assisting Mr. Crowder?
MR. WESTBROOK: Objection.
THE COURT: Sustained.
Q. Do you know from reviewing correspondence between Mr. Crowder and Mr. Temko that Mr. Crowder -- that Mr. Temko declined to play any further role?
MR. WESTBROOK: Objection, Your Honor.
THE COURT: Sustained.
Q. Ultimately, did the union prevail in the Fifth Circuit?
MR. WESTBROOK: Objection, Your Honor.

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THE COURT: Sustained.
Q. After the litigation was concluded, did the union and Johns Manville negotiate a smoking ban?
MR. WESTBROOK: Objection.
THE COURT: Sustained.
Q. Let's turn then to the last of our groups, the plaintiffs' attorneys. Did you find evidence in the historical records that you reviewed that attorneys representing people suing asbestos companies were aware of the risks of synergy?
A. Yes, I did.
Q. Did you find evidence that such plaintiffs' lawyers addressed union conventions from time to time and spoke about the dangers of synergy?
A. Yes, I did.
Q. Could I have number 166, which is Martin Demonstrative Exhibit 139?
Is this an example of such a speech?
A. Yes, it is. From the Sheet Metal Workers Association. Excuse me. Convention in 1986.
Q. What did -- what was said in this speech?
A. If you work with asbestos, you cannot smoke cigarettes. So I beg you, brothers and sisters, put those cigarettes down, throw them in the toilet, and flush them. End quote.
Q. In addition, did you observe in your review of

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plaintiffs' lawyers magazines and news letters and awareness of their part of the dangers of synergy?
A. Yes.
Q. Do you assume from your perspective as an historian that these plaintiffs' lawyers also got the word out to their clients of the dangers of synergy?
MR. WESTBROOK: Objection, Your Honor.
THE COURT: Sustained.
Q. So far, Doctor Martin, we have talked about everybody but the Tobacco Institute and the tobacco industry with respect to warnings about synergy.

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In your review of the historical record, did you find evidence, any evidence, that the tobacco companies or the Tobacco Institute played any substantial role in the public discussion about the dangers of synergy?
A. No, I did not.
Q. In all of the Selikoff materials, the government materials, the newspaper articles, the union news letters, the public health information, even the Johns-Manville and plaintiffs' trial attorney information, did you find any evidence, any report of a tobacco industry position on the dangers of synergy?
A. No, I did not.
Q. Are you aware of a publication known as "the Continuing Controversy" that was issued in 1979 by the Tobacco Institute?
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A. Yes, I am.
Q. Are you aware that in two or three of the approximately hundred sixty-eight pages of that document there is a discussion of synergy?
A. Yes.
Q. Did you find any evidence in any of the documents that you reviewed that anybody picked up on or reported that discussion of synergy from the 1979 Tobacco Institute continuing controversy document?
A. No, I did not.
Q. In fact, are you aware other than that document of any public statement by any tobacco company representative about synergy?
A. No, I am not.
Q. Now, are you aware, Doctor Martin, of any polling data in addressing whether or not the message about the dangers of synergy was getting through to people?
A. Yes, I am aware of such material.
Q. What polling organization are you relying upon?
A. In this case, the Roper organization, as I recall.
Q. Have you prepared a demonstrative summarizing what the Roper poll found in 1980?
A. Yes.
Q. May I have 170, please?
Can you tell the jury what a question was that was
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page 4891
asked and what the answer they got for all respondents?
A. Yes. This Roper poll actually prepared for the Federal Trade Commission in 1980, it says, if you smoke and have worked with asbestos you are at least fifty times more likely to get lung cancer than if you have done neither.
Seventy-four percent of the respondents say they know it's true or they think it's true.
Q. How many said that they know it was not true or thought it was not true?
A. Well, I can't see the number here but I think it was in the vicinity of about six percent. I am guessing at that.
Q. Four point six percent, does that refresh your recollection?
A. Yes.
Q. Now, is this a report for all respondents of smokers or non-smokers, asbestos exposed or non-asbestos exposed?
A. Yes.
Q. Did the Roper organization then go on to break it down by smokers and by blue collar workers?
A. Yes, they did.

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Q. Could I have the next slide, please? This is Martin Demonstrative 144. The one before was 143. The next slide, please. 171.

For smokers what did the Roper poll report?

A. For smokers, the rate was sixty-eight point five percent.

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No, it is true or -- in this case, the question says think it's true.

For blue collar workers, it's seventy-two point two percent.

(Continued on the next page.)

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BY MR. KRAUS:

Q. And if we compare that to the seventy-seven percent number that Mr. Gallup said was phenomenal, back in 1954, that's pretty close to the phenomenal level?

A. We're getting there, yes. We're within a few percentage points.

Q. We're getting close to the end now, Dr. Martin.

I want to talk about, in summary, what your opinions are.

A. Okay.

MR. KRAUS: 17, please.

BY MR. KRAUS:

Q. Is it your opinion, Dr. Martin, that there has been widespread awareness for many years that smoking can be harmful to one's health?

A. Yes.

Q. Is it your opinion, Dr. Martin, that there has been widespread awareness for many years that smoking can increase once's risk for serious diseases?

A. Yes.

Q. Is it your opinion, as a historian, that there has been widespread awareness for many years that smoking can lead to premature death?

A. Yes,.

Q. Is it your opinion, as a historian, there has been

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widespread awareness for many years that it can be difficult to quit smoking?

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A. Yes.
Q. If we turn to synergy, is it your opinion, as a professional historian, that asbestos workers were warned of the synergistic dangers of smoking and asbestos exposure by Dr. Selikoff and his colleagues --
A. Yes.
Q. -- by voluntary health agencies?
A. Yes.
Q. By newspapers and other media?
A. Yes.
Q. By labor unions?
A. Yes.
Q. By government?
A. Yes.
Q. By employers, physicians, and family?
A. Yes.
Q. And by Johns-Manville and others?
A. Yes.
Q. Finally, do you have an opinion as to whether or not the tobacco companies in any way distorted the body of public knowledge about the risks, the health risks, associated with smoking?
A. I found no such evidence.
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Q. Do you have an opinion as to whether or not the tobacco companies distorted the body of public knowledge about the potential difficulty in quitting smoking?
A. I have not found that evidence.
Q. And do you have an opinion as to whether or not the tobacco companies distorted the body of public knowledge about the risks of the synergistic interaction between smoking and asbestos exposure?
A. I have not found that evidence.
MR. KRAUS: I have nothing further, your Honor.
MR. WESTBROOK: Thank you, your Honor.
THE COURT: Do you want to do it now, or break for lunch?
MR. WESTBROOK: I think lunch would be appropriate, your Honor.
THE COURT: Okay. So, we'll break until a quarter to 2:00, please.
(Jury excused.)
THE COURT: Counsel, remain in place, please.
You can step down,.
THE WITNESS: Witness thank you, your Honor.
(Witness excused.)
THE COURT: We have a problem with respect to legal fees I think, do we not, under RICO? Probably the best way to handle it is to have a stipulation that should there be a
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recovery, the court will decide fees.
MR. WESTBROOK: That's acceptable, your Honor.
MR. BERNICK: We'll have to talk about it, your Honor.
THE COURT: Would you do that, please. Otherwise, I'll have to put it into the charge.
MR. BERNICK: If it's appropriate, I have looked through the depositions.
THE COURT: Let's take that up now.
May I have the files, please?
MR. BERNICK: Yes.

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This is the Houser file.
THE COURT: Thank you.
MR. BERNICK: I have flagged them for your Honor. Page 168, there's a reference to court approval of changes to the TDP and --
THE COURT: Gentlemen, strike that. Page 168, strike lines 4 to 6.
MR. BERNICK: Page 205, a reference to petitioning the court.
THE COURT: Yes, strike 11 to 15.
MR. BERNICK: Page 209, there's a reference specifically to the Adams litigation.
THE COURT: Yes. I think we ought to strike, on page 209, lines 6 to 18.
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MR. BERNICK: Pages 212 and 213, there's a reference to the court's decision in the Adams litigation.
THE COURT: Yes. Page 212, strike lines 10 to 25.
Then, on page 213, lines 1 to 19.
MR. BERNICK: On page 273, Ms. Houser sets forth her reflections, that are not really responsive to the question, but her reflections on whether people who have sued the Tobacco Industry, individuals who have sued the Tobacco Industry, have been successful. And that is not before the jury.
THE COURT: Well, what's the view of the plaintiffs' attorneys on that?
MR. MARLOW: Chad Marlow. Your Honor, if you look on the next page, 274, they have designated lines 2 through 14, and they are asking questions about why the Trust is suing, whether it's on behalf of individual or on behalf of the Trust. And the designation on the prior page just rounds it out more completely.
MR. BERNICK: That's the point. The point is, whether the lawsuit is on behalf of the Trust or claimants, and whether it affects the rights of claims. And that's when she goes on to give this long self-serving answer about claimants being successful, whether that makes -- this lawsuit is a lawsuit legitimately on behalf of claimants, and it's not.
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THE COURT: If you take out 273, lines 7 to 25, and 274, line 1, why don't we also take out 274, lines 2 through 14?
MR. BERNICK: That's fine.
THE COURT: Both those will be out.
MR. BERNICK: The remaining portion, that I don't have flagged there but is of importance, is that at pages 245 -- this is the beginning -- pages 245 through 246, and carries on through 247, and there are some other pages, it presents a principal question, which is, she was not familiar with exactly what had happened in negotiating settlements prior to the TDP. That was not her area of responsibility. I asked her questions about that.
THE COURT: What do you want to do?
MR. BERNICK: I want to take out basically statements that she makes about whether the Trust was --
THE COURT: What pages and what lines?
MR. BERNICK: Page 345, beginning at line 23, and it spills over, if you take a look at page 246, and then into 247. These are basically her comments.

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THE COURT: You want to take out all that material?
MR. BERNICK: Yes.
MR. MARLOW: Your Honor, you can see the designation that defendants have put --
THE COURT: All right. Take out everything on 245,
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246 and 247, lines 1 to 3.
MR. MARLOW: Your Honor, that being the case, defendants are trying to, at least, with their designations, are trying to say that Ms. Houser understands that there was an attempt to account for smoking. It doesn't complete the picture. They are attempting to say that the Trust was successful in discounting the entire amount of damages that the Trust will face or won't face because of smoking. You can see, on page 246, an attempt to pull three lines out of a more complete answer.
MR. BERNICK: Take that out.
THE COURT: We're taking out everything on pages 245, 246 and 247, and 248, lines 1 and 2, if that's agreeable.
MR. MARLOW: I'm quickly scanning it, your Honor, to make sure.
THE COURT: I think, myself, 247, lines 4 to 25, and 248, lines 1 and 2, does come in.
MR. MARLOW: Your Honor, I'm looking on page 248, lines 15 to 25. For example, they are also referring again, trying to account for whether individual smoking status would be ascertained by the Trust and accounted for, and continues on to 249. And again, without the ability of Ms. Houser to explain, although the attempt was made, it was largely unsuccessful. It paints it as if the Trust both attempted and succeeded in fully accounting for smoking.
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MR. BERNICK: That's the point. The point is, there was a procedure followed in the CAS norms.
THE COURT: What do you want left in?
MR. BERNICK: I want the procedure that begins after 247, line 4 and continues on to 248, which talks about the procedure that they followed.
THE COURT: Okay. You can have that, and the rest of it is out.
But then, it goes on to 249 and so on?
MR. BERNICK: Right.
THE COURT: That's all in.
MR. BERNICK: That's all in.
THE COURT: So, to be clear about it, then --
MR. BERNICK: We're taking out --
THE COURT: 245, 246, and 247, lines 1 to 3.
MR. BERNICK: Yes.
On the Smith deposition, that's fairly limited, and it's only one item. I'll give this back to the court, because this is the court's copy. There's a reference at page 197 to the Macchiarola article, and I don't know why that's necessary. We've been pretty careful about keeping out of the evidence that the Macchiarola -- that Macchiarola actually wrote an article, and the article itself does not come into evidence.
MS. PERRY: That was an inadvertent
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counterdesignation. It was talking about 197, 8 through 14. Plaintiffs withdraw that.

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THE COURT: All right. 8 to 14 is out.
And that concludes the Smith problem.
Anything further?
MR. BERNICK: No. I believe that that's it.
THE COURT: Okay. We'll break until a quarter to 2:00.
(Lunch recess.)

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A F T E R N O O N S E S S I O N
THE COURT: Will the witness take the stand, please.
J A M E S K. M A R T I N,
called as a witness, having been previously duly sworn, was examined and testified as follows:
(Jury present.)
THE COURT: Please be seated everybody.
MR. WESTBROOK: Good afternoon, everyone

CROSS EXAMINATION
BY MR. WESTBROOK:
Q. Hello, Dr. Martin. My name is Ed Westbrook. I'm going to ask you some questions this afternoon.
A. Okay.
Q. I couldn't help but think as I saw you sitting here this was like a PBS three-part series, The Return of Dr. Martin for the Third Time.
I'm going to try to get you out of here this afternoon. You talked about a lot of things and we'll do our best. You can help me if you would try to answer my questions yes or no and save any particular explanation you want to make for redirect.
If you can do that, try to move it along?
A. Okay.
Q. Doctor, you took us on a 400 year survey through history,

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and we're going to take our own survey in a few minutes, but first I want to ask you a few things about your expertise and your involvement in these cases.
We have had experts in this case, and the like, witnesses like Dr. Julius Richmond, who was Surgeon General back in the seventies.
Have you heard of him?
A. Yes, I have.
Q. We have had experts like Dr. David Burns, who was writing chapters for the Surgeon General's report through the seventies and eighties.

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Do you know who he is?
A. No I'm sorry, I don't.
Q. We have had some witnesses from the tobacco companies whose testimony was showed or brought in, some witnesses working back in the sixties or seventies, like Dr. Colby or Dr. Spears, and we brought their testimony in.
Have you ever heard of those individuals?
A. No, I'm sorry.
Q. Now, you are, with all respect, a bit of a different kind of witness in this respect, Doctor, that you --
THE COURT: Put a number on that, please.
MR. WESTBROOK: This will be Plaintiffs' Martin 1.
Q. Can you see okay, sir?
A. Yes. I can't see the bottom. I'm sure that's not
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critical.
Q. If it becomes important, we'll lift it up.
A. Thank you.
Q. All right. I know you have had some trouble reading that screen with those glasses. When I started, I didn't use these at all, but now I need to keep them around. I understand; we'll try to work with that.
A. I spent $8.99 for those glasses.
Q. Take them back.
A. I should pick up the budget a little bit.
Q. Get your money back.
You came along in this field of smoking and the history of smoking research about 1994 was the first time you got involved on behalf of the tobacco companies?
A. Actually, the first time that I became involved in looking at material with respect to tobacco was back in the 1970's when I was working on the Drinking in America book.
Q. That was looking at alcohol?
A. Yes, but material -- the two topics blend together at various points in time, and that's when I first started to become aware of the topic of smoking and tobacco in America.
Q. Was it 1994 when the tobacco companies came to you and asked you to start an extensive project looking at this issue?
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A. I was -- two attorneys talked to me in 1994. Yes.
Q. Then, am I correct, that that research developed from the 1994 contact was about smoking in America, without any particular emphasis on asbestos synergy; is that correct?
A. Yes. That's correct.
Q. Then, on or about August or September of 1999, you were asked to undertake an assignment to look into the history of smoking and asbestos interaction knowledge; is that correct?
A. Yes. I think the date is approximately correct.
Q. And am I correct, Doctor, that your specialty in the field of historical research has been, and your publications have emphasized the American Revolutionary period?
A. No, I don't think that is correct.
Q. Let me ask you one part at a time. Your peer reviewed publications in the field of historical research, have they focused on the American Revolutionary period?
A. Many of them have, yes.
Q. Doctor, let's start back here, 1604. We'll talk about some of those things.
In all the time up until today, as you sit here in

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this courtroom, have you ever been asked by the Surgeon General of the United States to give your views on the history of smoking information and knowledge?
A. No, I haven't.
Q. Have you ever been asked by any state government body to
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give your views on the history of smoking historical knowledge?
A. No.
Q. As we sit here today, sir, have you ever published a peer reviewed article in the literature on the history of smoking and knowledge?
A. I am working on a book, but I haven't published it yet.
Q. And the book you're working on in large part draws on the work that you've done at the request of the tobacco companies, does it not?
A. Well, in addition, the work that goes back to the 1970's with the Drinking in America book.
Q. And we have heard from a number of scientists that peer review is the way that scientists and writers get their information out and they see if it's acceptable to be published, and then it gets out and can be criticized by other historians in peer review literature. Is that normally how it works?
A. That is certainly one way, yes.
Q. Okay. To shorten this particular segment up, Doctor, am I correct that no one has asked you to give your views on smoking and asbestos in America, other than the tobacco companies?
A. I'm not quite sure how to answer that, but I think the answer would be, so far as I know to this point, the answer
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would be, generally speaking, no.
Q. Doctor, you talked about a number of things, but among those you talked about polling data. Am I correct that you have no formal training in polling?
A. I took a course in graduate school back in the 1960s on public opinion as part of my minor program for my Ph.D, so I have taken that one course. Certainly, the focal point of that was polling.
Q. You have no formal training in polling?
A. Well, beyond that course, no.
Q. Have you ever taken a poll?
A. No, I'm an historian.
Q. Okay. Am I correct, Doctor, that you work alone, you really have no staff?
A. Well, I have a research assistant.
Q. Other than your research assistant, do you have any staff?
A. Well, I have two individuals who help me do research, but, no. I'm a college professor.
Q. I saw numerous, numerous slides that were put up here with excerpts from various documents. Did the tobacco lawyers assist in the preparation of those slides?
A. My staff and I went through the material and made all sorts of selections, and certainly I met with the attorneys and we discussed what would be a representative sample of the
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materials.
Q. Sir, I'm not suggesting there's anything wrong with

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meeting with the attorneys, not a all.
A. Okay.
Q. Now, I'm going to put up a demonstrative that I am going to mark as Plaintiff Martin 1-D, for demonstrative.
Let's see how your monitor is working. There are no small words on this one so maybe we can be able to read it okay.
A. Okay. All right.
Q. See that okay, sir?
A. Yes, I can.
Q. Great. Am I correct, sir, that there are numerous factors that can shape a person's perception on an issue, various ways that a person learns about an issue; agree with that generally?
A. Yes, uh-huh.
Q. I've got some of the potential factors up there. At the top we've got some like Government Statements.
You talked about some of those this morning, didn't you?
A. Yes.
Q. Newspaper/magazine articles. You talked about some articles in Reader's Digest and elsewhere?
A. Yes.
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page 4909
Q. TV Shows and Films. You entertained us with a little bit of that. And Research Statements, like Dr. Selikoff's statements; you talked about that?
A. Yes.
Q. Now, there are other sources of information that can come to people, such as Industry Advertising, and I understand your testimony to be that you really didn't focus on Industry Advertising; is that correct?
A. That is correct, yes.
Q. And then there may be Films, Industry Films, an industry can put out films, but you didn't talk about that this morning and focus on films, did you?
A. No.
Q. And then Industry Correspondence to the public, or members of the public. A company can write to somebody who is inquiring about their product and correspond directly, correct?
A. Right.
Q. And you didn't focus on that?
A. Well, I focused on, with this particular case --
Q. Dr. Martin, my question was, you didn't focus on that, Industry Correspondence?
A. Only so much as would fall into the public record.
Q. And Industry Speeches, you didn't talk particularly about Industry Speeches, did you?
page 4909
page 4910
A. No.
Q. And then we have Industry Press Releases, they go along with speeches, so is it fair to say that, generally, below the dotted line you really didn't focus on those particular elements of communication in your testimony this morning and into the afternoon?
A. Well, if industry press releases made it into the newspapers, I would most likely have seen that material. I'll give you that as an example.
So though I wasn't focusing on it, my focus really was on materials that were available to the public.

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Q. And you didn't focus at all on Industry Internal Documents, what the companies were saying or why they were saying or not saying something, you didn't focus on that, did you?
A. Well, if the information, again, became public in some way at a particular point in time, yes. If it remained within the industry, then it wouldn't be part of the public record, so the answer would have to be no.
Q. Have you in the course of your historical research gone into the tobacco industry files and read their internal documents?
A. Not with a specific focus.
Q. Doctor, is it your testimony that the hazards of smoking were common knowledge back in the 1870s?
page 4910
page 4911
A. I can't say one way or the other with respect to that.
Q. Let me show you some sworn testimony you gave in a case called Burton, on February 23, 1996. Do you remember testifying under oath in the Burton case?
A. A deposition.
Q. A deposition is under oath just like you're sitting here.
A. Yes.
Q. Let's see how the monitor is working on some smaller print this afternoon. I am going to bring it in for you, Doctor.
You were asked this question, and this is on page 186 of that transcript:
"How early on did the public have a common understanding of the possible habit-forming qualities and health consequences of smoking?" You answered: "How early on?
"QUESTION: Yes.
"ANSWER: I would say certainly by the 1870s and 1880s, if not before."
Is that your testimony, that before, at least by the 1870s and 1880s, if not before, the public had a common understanding of the health consequences of smoking?
A. Well, I think I perhaps have modified my thinking a little bit on that subject. After all, the statement was made, what would that be, approximately four years ago,
page 4911
page 4912
something like that?
Q. And --
A. I have done a lot more research since that time.
Q. And one thing you learned since that time is that cigarettes were not even in wide use in the 1870s, you've learned that since you made that statement, correct?
A. Did that question address specifically cigarettes? It said smoking.
Q. My question, Doctor -- you listen to my question, my question was, one thing that you learned is that cigarettes did not come into wide use until after the 1870s in this country, you have learned that, haven't you?
A. I learned that a long time ago, yes.
Q. One thing that you did talk about on your direct examination, and I think you made a point of putting up some slides, were some textbooks -- do you recall textbooks, such as this 1932 New York textbook about Smoking Sometimes Causes Cancer?
A. Yes, I do.
Q. Okay. Did you, Doctor, in your review take a look and

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see what the tobacco industry wrote to schools when they were asked about the health consequences of smoking, did you take a look in your research to see that?
A. Did you have a particular year in mind?
Q. Doctor, I get to ask the questions.
page 4912
page 4913
A. Sorry.
Q. Did you take a look to see what the tobacco industry wrote to schools when it was asked by schools or schoolchildren about the health hazards of smoking, did you take a look at that?
A. If those documents were part of the public record.
Q. Well, did you --
A. I would have probably come across them.
Q. Let's take a look at Exhibit 2599, which is a letter of January 11, 1990 --
THE COURT: Why does my screen have a split? I will need another one.
MR. WESTBROOK: I suspect sabotage, but I can't prove it. This is 2599.
THE COURT: Not yet in evidence?
MR. WESTBROOK: No, your Honor. We offer that into evidence.
THE COURT: It's just a technical problem.
BY MR. WESTBROOK:
Q. This is a letter written in January 1990 to the principal of the Willow Ridge School.
"Dear Sir or Madam: A number of your fifth grade students have written R.J. Reynolds Tobacco Company," and it goes on about children's toys and candy cigarettes, but I want to focus, if we can, sir, I'm going to bring it in for you a
page 4913
page 4914
bit, on this question that Reynolds addresses to the school principal in 1990.
"Some of the students also commented about the controversies surrounding cigarette smoking." Then the industry goes on and says they consider this to be an adult habit. Then the next paragraph:
"The tobacco industry is also concerned about the charges being made that smoking is responsible for so many serious diseases." They go on to talk about the CTR. Then the next paragraph says:
"Despite all the research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking."
Dr. Martin, did you know before I just put this document on the screen that in 1990, fifty-eight years after the textbook that you said told schoolchildren that smoking sometimes produces cancer, that R.J. Reynolds had written a school principal and told the principal, on behalf of the students, that the simple and unfortunate fact is that scientists do not know the cause or causes of cancer, did you know that, sir?
A. Well, I've seen this letter before. So, yes, I am aware of this letter.
Q. Okay. And you are also aware, are you not, that
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page 4915
Reynolds, on the second page of the letter, told the principal: "We would appreciate your passing this information

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along to your students." You're aware of that, are you?
A. Yes, I remember that from this letter, yes.
Q. And are you aware, sir, that that was not an isolated instance, that the tobacco companies repeatedly wrote schools and schoolchildren, when asked about the hazards of asbestos throughout the decades, and told them similar things?
MR. KRAUS: I object to the characterization, your Honor.
MR. WESTBROOK: Let's look at a few specifics, Doctor. This is Exhibit 9445.
Q. This is a letter of May 1, 1963, to the fourth-graders at the Geiger School. This is from R.J. Reynolds Public Relations Department.
"Thank you for thinking of us in connection with your school research project."
The third paragraph again talks about the CTR, and then the next paragraph: "Despite many years of extensive research, medical science has been unable to establish that smoking has a direct causal link with any human disease."
Dr. Martin, had you seen this letter to the fourth-graders, written by R.J. Reynolds, Exhibit 9445, before I put it on the screen?
A. I don't think I've seen this one, no.
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Q. Going up six years to 1969, and this is Exhibit 44530, to Miss JoeAnne Froelich. Miss Froelich speaks for a student.
Dear Joe Anne. Thank you for your letter of October 23. We also received several other letters from your classmates with comments similar to yours."
It goes on, on the next paragraph to say that Reynolds doesn't approve of young people smoking. Then says all the way down there: "Despite all the research going on, medical science has not found any conclusive evidence that an element in tobacco or tobacco smoke causes any human disease."
Dr. Martin, before I showed you Exhibit 44530 October 30, 1969, did you know that Reynolds was writing directly to schoolchildren saying it was not proven that smoking caused disease, did you know that?
A. I saw him the 1990 letter. I've seen that before.
Q. Did you know they were writing in the sixties?
A. I can't say that I did.
Q. Let me show you Exhibit 44531, which is a letter to the Reynolds Tobacco Company from a Karen Childress --
MR. KRAUS: Objection. Hearsay.
MR. WESTBROOK: It's 1969, your Honor.
THE COURT: What year? '69? Ancient document.
Q. All right. "Dear sirs: I am in the seventh grade and have to do a report on smoking and why it is good for you. I
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wonder if you could give me reasons why or anything that you can. I would appreciate it if you could."
That's 44531.
Let me show you the response, Doctor. November 7 was the letter. This is November 14, 1969, to Karen Childress. Exhibit 44532.
"Despite all the research going on, medical science has not found any conclusive evidence that an element in tobacco or tobacco smoke causes any human disease."
Dr. Martin, did you know that Reynolds wrote to students like Miss Childress in 1969 with that type of

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response, denying causation?
A. That's what, the fourth letter?
Q. Did you know that, sir?
A. I haven't seen that letter before, no.
Q. Let's look at one more, Doctor, and we'll move on. This is Exhibit 44365. This is April 10, 1985, to Mellisa Riggelman.
"Dear Miss Riggelman. Thank you for your letter which has been referred to my attention. Despite all the research going on, medical science has not found any conclusive evidence that any element in cigarettes, tobacco, or tobacco smoke causes human disease."
Dr. Martin, did you know that in 1985 the tobacco industry was writing that type of correspondence, that there

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was, despite all the research, no conclusive evidence that tobacco caused disease, did you know that, sir, before I showed you that on the screen?
A. I had not seen that letter before, no. That is a total of five? I'm just wondering.
Q. Doctor, could you just answer my questions, we'll move along, okay?
A. Thank you.
Q. Doctor, have you gotten out the file of R.J. Reynolds correspondence and taken a look through all the letters to see what they told people consistently over the decades, have you done that, sir?
A. The R.J. Reynolds file, no. I don't know what the file is that you're referring to, but I'll be glad to look at it.
Q. In preparing for your testimony, did the tobacco lawyers tell you that they had files of letters by R.J. Reynolds and other companies to consumers, did they tell you that?
A. I'm aware that there are letters to consumers. Yes.
Q. Now, let's talk about this concept, if we can, of common knowledge that is generally what you testified about here today, common knowledge?
A. Public awareness, yes. Common knowledge -- well-known pervasively through the community?
Q. All right. And common knowledge, by definition, is information that's supposed to be commonly known, right?

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A. Yes. That's correct.
Q. For instance, you have common knowledge?
A. In regard to?
Q. Well, whatever is common to the public, because you're a member of the public?
A. That's true.
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BY MR. WESTBROOK:
Q. Okay. And the folks who work for the tobacco companies, they have common knowledge, they are members of the public?
A. I guess so.
Q. All right. Let's take a look at some statements, and see how they compare to common knowledge. The first statement on the screen, please.
Do you see that document. The first statement was made in the year 2000. It says: After 1964, "the debate about smoking being harmful was fundamentally over." Do you see that statement, sir?
A. Yes.
Q. Do you know what member of the public with common knowledge made that statement?
A. Well, it may have been me.
Q. Sounds like something you said?
A. Yes.
Q. All right.
That's correct.
All right. Let's look five years after the date that you said, in your deposition, -- and you were correct -- the debate was fundamentally over. Now we're in 1969. This statement: "Despite the publicity being generated by the anti-tobacco forces, the hypothesis that cigarette smoking is responsible for human disease has not been proven."
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Do you know who said that, five years after you said the debate was fundamentally over, who said that the hypothesis had not been proven?
A. I would venture a guess it may have been one of the tobacco companies.
Q. All right. Let's put up the source of that one. That's another one of those consumer letters, 1969. That's Exhibit 76341.015.
Let's look at 1970. Six years after you said the debate was over, "At this time, the cause of lung cancer is not known. Yet, tobacco has been blamed. And without research proof."
Can you hazard a guess, doctor, as to who might have said that?
A. I really don't know.
Q. Put up the source for that one. Do you know who Mr. Cullman was, the president of Philip Morris?
A. Yes. I've heard his name before.
Q. Do you know that he gave speeches periodically around the country?
A. That wouldn't surprise me.
Q. You haven't seen this speech where Mr. Cullman said, in 1970, that Tobacco was blamed without research proof?
A. I have not seen that at all, so I can't verify it one way or the other.
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Q. That's Exhibit 17903.
Let's put up the next statement. Seven years after

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you said the debate was over, the public statement: "We do not believe that cigarettes are hazardous; we don't accept that."

Does that sound like something the Tobacco Industry might have said?

A. I suspect so.

Q. Put that up.

Chairman of Philip Morris, on Face the Nation. This is Exhibit 9089. You talked about Dr. Selikoff talking on one of these broadcast shows. You recognize Face the Nation as being one of those nationally broadcast shows?

A. Yes, this is the CBS version of Meet the Press, if I'm not mistaken.

Q. Nationally broadcast show?

A. I believe.

Q. Here is Mr. Cullman, on page 14: "We do not believe that cigarettes are hazardous. We don't accept that. I believe they have not been proved to be unsafe."

Had you seen that broadcast statement by Mr. Cullman before I showed it to you, sir?

A. I can't say for sure. I've seen some Face the Nation transcripts of various types and kinds, but I can't say for sure that one.

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Q. All right. Let's move on up to 1977. Now, thirteen years after you said the debate was over: "We think all of our cigarettes are safe, because there's no documented evidence whatsoever that indicates a cause-and-effect relationship between smoking and any disease.

Do you know who said that, sir?

A. No, I don't.

Q. Do you know where it was said?

A. No, I don't.

Q. Would it surprise you if it was said on a TV show?

A. I don't know what TV show. I don't know. Sorry. It's something coporate representations here --

Q. This is Exhibit 34 --

A. -- on TV.

Q. 34325, the transcript of a Robert Roche interview, responding to the need for safer cigarettes on WAVE-TV, Channel 3. Have you looked into the Industry files, to see what transcripts they had of interviews given by their executives and broadcast on TV stations in various parts of the country; have you looked for that?

A. I can tell you the programs that I have seen.

Q. Sir, my question is: Have you looked specifically for these transcripts in the Industry files?

A. In isolation from other transcripts, no.

Q. Let's move on up. 1978: "Because the Tobacco Industry is

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convinced that no cigarette has been proved unsafe, any suggestion of safe or safer we regard as proceeding along a path of tortured logic."

Are you familiar with that statement, sir?

A. That would fit with the safer-cigarette debate of 1978 with Dr. Gori.

Q. Let's see who said it. It was not Dr. Gori, it was Mr. William Dwyer of the Tobacco Institute. Have you gone into the Tobacco Institute files, sir, to look to see the speeches and presentations the Tobacco Industry gave around the country on these issues?

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A. I have seen a number of Tobacco Institute documents. I have not seen this one.

MR. WESTBROOK: This is Exhibit 10782, your Honor. This is entitled "The cigarette controversy, a a lecture by William F. Dwyer, vice president of the Tobacco Institute.

Now, it says: "Prepared for delivery to candidates for the graduate degree of master of BA at three universities." Then it notes: Includes material presented in lectures to undergrad witnesses, students in journalism, communications, health education, political science, history and sociology at another two, four, six, eight, appears to be another ten universities. And it notes: Incorporates sections from speeches given to chapters of the Professional Society of Journalists and the Public Relations Society of

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America.

I have it counted up there, that this 1978 presentation was given, in whole or in part, at least fifteen times, sir. Have you ever seen this presentation?

A. I didn't see it said that these speeches were given. Is that what it said? I'm sorry. It's a list.

Q. It says "The cigarette Consumer Controversy, a lecture by William Dwyer." That usually means a speech?

A. It says "Prepared for delivery to candidates."

Q. And then it says: "Includes materials presented in lectures." "Presented in lectures" means somebody speaks it out?

A. Right. I don't know what material was presented in lectures.

Q. Did you ask the tobacco lawyers what material was presented, when you were getting ready to come on the stand?

A. With respect to this particular item, no.

Q. 1978: "It is therefore likely that smoking may be found ultimately to play a minor role in causing lung cancer compared with the role played by occupational exposure."

Fourteen years after you said the debate was over, do you know who said that it's likely that smoking may be found to play a minor role in lung cancer?

A. This could have come from any one of a number of sources.

Q. Let me help you out. Put up the source.

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A. Okay.

Q. Dr. Theodore Sterling, do you know who he was?

A. No, I don't.

Q. Were you not aware, in your preparations, that Dr. Sterling was a scientist funded by the CTR Special Projects Group? You're not aware of that?

A. No.

Q. Let's put up Exhibit 80724, from the Louisville Courier Journal of September 24, 1978: "Blue-collar work may be hazardous to your health."

You talked about some newspapers, and you had some various ones. Do you recognize the Louisville Courier Journal as being a newspaper that publishes in the Louisville, Kentucky area?

A. Yes, sir.

Q. Dr. Sterling's article, and he talks about asbestos; do you see that, sir? He talks about occupational exposure to asbestos?

A. Yes.

Q. How are those 8.99 glasses working?

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A. Not very well. It's eleven times as many laryngeal-cancer patients were found to have had occupational exposure to asbestos, as compared with patients who did not have laryngeal cancer.
Q. He goes on, from that statement: "It is therefore likely

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that smoking may be found ultimately to play a minor role in causing lung cancer, compared with the role played by occupational exposure."

Are you familiar or were you familiar with this work by Dr. Sterling and his publication, where he said that smoking may be found to play a minor role compared to occupational exposure such as asbestos? Were you familiar, before I put this up on the screen?

A. Laryngeal cancer, I'm sorry, I don't have any awareness of that.

MR. WESTBROOK: We offer 80724 into evidence.

MR. KRAUS: I have not seen it before. Can I see it?

THE COURT: Look at it, please.

Show it to counsel, please.

(Pause.)

MR. KRAUS: No objection.

THE COURT: Admitted.

(So marked.)

BY MR. WESTBROOK:

Q. Doctor, you said, did you not, that until I put that article up, you hadn't seen the Sterling article; correct?
A. This particular article?
Q. Yes, sir.
A. No, I hadn't seen this particular article.

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Q. Did you know that Dr. Sterling's work, where he said that occupational exposure to things like asbestos may be worse than smoking, was funded by the Tobacco Industry through a CTR "Special grant and special project"; did you know that, sir?
A. I was not aware of that, no.
Q. Let me show you a document produced by the Industry, which is 3084, a listing on September 27, 1994 of special projects administered by the Council for Tobacco Research, USA, Inc.

And I have a reference, over on page 47, to CTR Council Special Project Number 71, investigator Theodor D. Sterling, titles and subject: "A continuing critical review of major factors in the etiology of lung cancer and other diseases," funding dates from September 1, 1973 to March 31, 1990, and the funding amount, $4,760,878.

Down here, I'll show you on the screen that one of the articles on work that Dr. Sterling did was on the subject of the mutual relationship between smoking, occupation and disease. Then he made a presentation on that subject in September 1978?
A. In Yugoslavia.
Q. Yes, sir.

Do you have in your mind that in the same month, he published an article on the same topic here in this country, in Louisville, Kentucky, September 24, 1978; do you see that,

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sir?
A. Yes.

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Q. Have you investigated to see the extent to which public statements blaming occupational hazards like asbestos for disease were funded, although written by doctors, were funded by the tobacco companies?

THE COURT: What is that document?

MR. WESTBROOK: This document is 3084, a list of special projects administered by the Council for Tobacco Research.

MR. WESTBROOK: Dr. Sterling's special project is number 71, and that goes from Pages 47 to 62, your Honor. We would offer those pages into evidence.

THE COURT: Admitted.

(So marked.)

A. Could I ask you to repeat your question? I'm sorry. I don't think I answered it.

Q. My question is, sir: Did you know, as you sit there, that Dr. Sterling, who wrote this article that we saw in the newspaper, had been funded with over $4 million of tobacco money? Did you know that?

A. I have not studied research grants. I'm not sure what role they play in public awareness. So, the answer is no.

Q. All right.

1979: "The claim that cigarette smoking causes lung

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cancer has not been scientifically proven."

Can you guess that that was made by the Tobacco Industry?

A. I would guess so.

Q. All right. Fifteen years after you say the debate was over, and that's the Continuing Controversy, and the jury has heard plenty about that document, let's move up to 1984,8 twenty years after you said the debate was over: "There is a cigarette controversy," etcetera.

Do you know who said that, sir?

A. I'm just finishing reading the quotation.

(Pause.)

A. No, I don't. I don't know who said that.

Q. The Tobacco Institute, that's Exhibit 13969.

Did you look at the Tobacco Institute's numerous pamphlets that were put out over the decades on smoking and health, in the course of your research, sir?

A. I have seen some, yes.

Q. Have you seen the 1984 pamphlet, "Cigarette controversy, why more research is needed"?

A. I can't say specifically whether I've seen that particular pamphlet.

Q. Let's move on up: 1992: "We believe that scientific proof that cigarette smoking causes chronic diseases in humans is still lacking."

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Do you know who said that twenty-eight years after you said the debate was over?

A. No, I don't. I don't know specifically who said it.

Q. It's Philip Morris.

Let's show on the screen 76341.015. This is a letter from Philip Morris to Mr. Floyd Griffin, August 31, 1992: "We believe that scientific proof that cigarette smoking causes chronic diseases in humans is still lacking."

Okay. Let's move up now to the year 1997:

"QUESTION: What about Lorillard statements? You've stated here publicly that you do not believe that smoking has

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been proven to cause lung cancer. Is that a statement that you believe is true and credible?

"ANSWER: Yes, I do.

"QUESTION: Is that a statement that you believe the public should rely on?

"ANSWER: I think they should rely on that statement, yes."

Do you know who made that statement, sir, thirty-three years after you said the debate was over?

A. I can't -- I'm not aware of who said that.

Q. All right. That was Dr. Spears, the CEO of Lorillard, in sworn testimony.

Had you seen that before you got on the stand, sir?

A. No, I hadn't.

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Q. I promised my staff that I was going to try to be neater. I'll put these away, and go on to something else.

Doctor, you are familiar, are you not, with the fact that the Industry got together around 1953, out of concern over the publicity about smoking and health, some of what you have talked about today, and they organized to put out a public statement that became known as the Frank statement. You're familiar with that?

A. Yes, I'm aware of the Frank statement.

Q. Have you seen the Industry internally discussed as to why they came out with that Frank statement? Have you seen that reason?

A. I may have. I can't say for sure.

Q. Let's look at Exhibit 3793, which I believe is in evidence. It's the forwarding memorandum discussing around the time of this Plaza Hotel meeting that the jury has heard about: "There is only one problem -- confidence and how to establish it; public assurance, and how to create it -- in a perhaps long interim when scientific doubts must remain. And, most important, how to free millions of Americans from the guilty fear that is going to arise deep in their biological depths -- regardless of any poo-poo'g logic -- every time they light a cigarette."

Did you know that the Industry's aim was to free millions of Americans from a guilty fear about smoking? Were

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you aware of that sir?

A. I don't know who wrote the document. I can't comment on it.

Q. Is this one of the documents that you didn't see?

A. I may have or may not. But I don't know who wrote the document. So, without a context, it's just not something that I can really comment on.

Q. You certainly have seen the Frank statement, haven't you?

A. Yes, I have.

Q. And you're aware that over the years and over the decades, the Industry reaffirmed the Frank statement to the public, came out and said, "Remember in 1954, we said these things. Well, we're living up to them"; are you aware of that?

A. I need to see a document.

Q. Let's look at Exhibit 20112, which is remarks of Addison Yeaman. Do you know who Addison Yeaman was?

A. Yes. He worked for one of the tobacco companies, if I'm not mistaken.

Q. Close enough, for now.

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"My assignment today is to inform you of the measures the Tobacco Industry has taken to discharge its obligation to investigate the question whether the use of tobacco in cigarettes is causative of, or materially contributes to, a number of diseases that constitute major health problems

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throughout the world."

So, he's giving a status report; correct?

A. It would sound like that, yes. I don't know who he's giving the status report to, but --

Q. On page 2, his speech continues: "That was the situation in which the cigarette found itself in 1954. The companies fully recognize that the Industry has an absolute duty and a heavy obligation to seek to determine what, if any, part its products play in disease." And it goes on on the next page, and talks about an advertisement published throughout the country stating the position of the Tobacco Industry, and gives the various pledges, pledging aid and assistance, establishing a joint Industry research group."

Do you recognize those as the Frank statement pledge, do you not?

A. Yes, sir.

MR. KRAUS: Your Honor, can I have an exhibit number for that?

MR. WESTBROOK: 20112.

BY MR. WESTBROOK:

Q. One of the first things you told us about in your tour of history was the King James I think 1604 counterblast to tobacco?

A. Yes.

Q. Did you know that the Industry publicly spoke about that

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very document, and sort of ridiculed it as something that was off base?

A. I have not seen that document, no.

Q. Let's look at Exhibit 10940, presentation by George Weisman, vice president of Philip Morris, entitled "Facts versus fancy." It says: "But these medical attacks are nothing new. For 350 years, unexplained diseases have been attributed to tobacco, from King James, the first treatise on how it affected the rumors and humors of the body" --

That's the counterblast you were talking about?

A. Yes, I think that is a reference to it.

Q. -- to as late as the 1920s, when tuberculosis was attributed to cigarettes. In succession, each charge has been disapproved, and the Tobacco Industry has marched forward with the pace of America. It will continue to do so."

A. I didn't see the top of the document. Can I see the top of the document, please?

Q. "Wait until the axe falls"?

A. No.

Q. 10940 is the Exhibit Number?

A. I would like to see the top of the document.

THE COURT: Let him see the document.

A. I would like to see the front page of the document.

Q. You want to see the first page, sure.

A. Sorry.

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Q. Which part do you want to see, doctor? "Fact versus fancy"?

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A. I just wanted to see what kind of a meeting it was. That's all. I can't read it. I'm sorry.
Q. It says: "From seven states, Florida, Georgia, North Carolina, South Carolina, Tennessee, Alabama, Mississippi, regional NAMA meeting in St. Simons, Georgia, February 26, 1954, by George Weisman, vice president of Philip Morris & Company, Limited, Inc."
Are you familiar with that speech?
A. I'm sorry. I thought you said that document was from the 1970s. It was from 1954?
Q. 1954, sir.
A. Okay.
Q. Now, you talked about Reader's Digest.
Something else you're familiar with, are you not, is Consumer Reports, the magazine, you get it at home, don't you?
A. Yes, in fact, I do.
Q. And Consumer Reports has published information on smoking and health over the years, has it not?
A. Published a number of articles in the 1950s, that is correct.
Q. Let's look at one of those, which is Exhibit 20022, Consumer Reports of March 1957, entitled "Cigarettes."
Now, I'm going to have to bring this in, so we can

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read it: "In a recent issue of the tobacco trade publication, the editors, speaking of the research that has indicated a relationship between cigarettes and lung cancer, tossed off this seemingly lighthearted comment: The only certainty that emerged is that mice shouldn't smoke.
"The editors' flippancy may have been inspired by the apparently complete recovery of the cigarette industry from the staggering punches medical investigators landed on it a few years ago."
You talked about some polls in 1954, about people having heard of an article about smoking damaging health. Were you aware, sir, that a few years later, in 1957, Consumer Reports noted that the Industry had made a complete recovery?
A. Yes, I was aware that, in terms of the sales, that's correct.
Q. And the article talks about why that was so, on the second page.
First of all, let's look at the statement here, that last December, in Printer's Ink, an advertising-trade magazine, tobacco business consultant Harry Wooten wrote: "The smoking and health controversy may be collapsing for lack of nourishment. Even the Department of Agriculture concedes that many people who had reduced their smoking or cut it out entirely in 1953 and 1954 probably have resumed or increased their consummation, mainly using filtertip

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cigarettes."
Were you aware, doctor, that the Industry came out with filtertip cigarettes, and encouraged people that that was the way to go for a healthier smoke?
A. I know that filtertips came into the marketplace significantly in the 1950s, yes.
MR. KRAUS: Your Honor, can I see a copy of that? I don't think it was disclosed to us before.
THE COURT: Of course.
BY MR. WESTBROOK:
Q. Doctor, have you looked at the Surgeon General's reports,

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to see the Surgeon General's views on the Tobacco Industry advertising of low tar and nicotine cigarettes?
A. Can I take a stab? 1981.
Q. We'll look at the Surgeon, 2000.
A. I wanted to see whether I was good at dates, being a historian.
Q. I'm sure you are, doctor. This is the Surgeon General's report, 2000.
A. Oh.
Q. "Reducing tobacco use, a report of the Surgeon General," which is Exhibit 50724. And, looking on page 184, talked about polls?
A. Okay.
Q. Moving on up now to a poll in 1993, the Surgeon General

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recites a 1993 Gallup poll, in which forty-nine percent of the respondents stated that they believe that the advertising message, in terms such as low tar, low nicotine or lower yield, was that the brand was safer, and only four percent believed that the advertisements were false and misleading. The analysis by Giovino and colleagues also suggested that many smokers of low-tar cigarettes may have used these brands instead of quitting?

MR. BERNICK: I specifically object. This asks the jury to take on whether the warnings mandated by Congress are adequate or not.

THE COURT: I'm sorry?

MR. BERNICK: This effort here is to attack the adequacy of the warnings. That information is perfectly consistent with that required by the FTC. The ads must contain that information. Counsel is inviting this court and this process to attack the adequacy of the warnings by Congress.

THE COURT: The warnings on the tobacco dispensers of cigarettes or the cartons are required by law. They cannot be modified.

(Continued on next page.)

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EXAMINATION CONTINUES
BY MR. WESTBROOK:

MR. WESTBROOK: Your Honor, this doesn't concern the warning. These are descriptive terms, low tar, low nicotine.
Q. The question is, have you read what the Surgeon General had to say about what those terms convey to the consuming public?
A. I have read the 1993 Gallup poll too, and this is certainly not the only question asked in that poll.

THE COURT: I didn't understand that as responsive.

THE WITNESS: Yes, I have read that. The poll contains --

THE COURT: That wasn't meant to be humorous.

THE WITNESS: I'm sorry?

Q. Doctor, I want to ask you and we are moving up chronologically, so we've gotten from sixteen hundred right on up to 1957?
A. I noticed we skipped a few years.
Q. Well, doctor, we are going to skip a lot of years to get out of here.

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This is a 1957 follow-up poll, I think you put up on direct, correct?
A. That is correct, yes.
Q. All right. Then you also talked about some statements about 82 percent. This is a smokers, 82 percent, they happen
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to read or hear about the recent poll. Okay?
A. Yes.
Q. I've got an article here which is ARF, it comes from the defendants, ARF-001578, which is July 21, 1957 entitled "Public Sees Smoking Link to Lung Cancer."
You see that, sir?
A. Yes. That is the Gallup -- the Gallup column or Gallup poll.
Q. Talking about this poll?
A. Yes.
Q. All right. The part of the poll that you put up there was that 82 percent of smokers had -- happened to read or heard about the report, correct?
A. Yes.
Q. Okay. The article itself goes on to talk about another question in that poll, this will strain the power of this machine -- interviewers next asked, what is your opinion, do you think cigarette smoking is one of the causes of cancer of the lung?
So the question you put up was whether people had heard about any article. Now the next question is, what is your opinion? Do you think cigarette smoking is one of the causes of cancer of the lung?
When people were asked what they think, cigarette smokers, 38 percent said they thought cigarette smoking did
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cause lung cancer. 36 percent said no, it was not, and 26 percent were undecided. Do you see that, sir?
A. Yes.
Q. So that although 82 percent had heard it -- according to this, only 38 percent of smokers believed it, correct?
A. We have gone into a new category. One is an awareness question. One is a belief question. And belief normally runs behind awareness in these types of questions. That's well documented.
Q. Let's take a minute and look at a couple of the other poll issues. On this issue of awareness.
You put up this chart or counsel put it up and you commented on it.
THE COURT: Indicate which chart it is for the record, please.
MR. WESTBROOK: Your Honor, this is a chart entitled "Public Awareness of Well-known Events, Persons and Facts." My particular copy was not numbered, but I'm sure counsel can give us that number.
THE COURT: Okay. That's sufficient.
Q. All right. Can you see that, doctor?
A. Yes.
Q. You were comparing the 90 percent heard or read that cigarette smoking causes lung cancer with those other bar charts, correct?
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A. That's correct.
Q. All right. Let's take a look at the comparison. The 90

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percent that you are comparing, those were people who had heard or read about cigarettes, correct?
A. Yes.
Q. All right. The Tiger Woods example, where people -- were people who knew something about Tiger Woods, correct?
A. Need have to be aware of it to know it.
Q. But first you are aware of it and then you may believe it, correct? So when you ask somebody if you know it, they know that Tiger Woods was a golfer, hadn't just heard something about Tiger Woods. They claim to know it. Correct?
A. I thought I indicated with that particular one that I thought it would be much higher today.
Q. Let's take a look at the others.
A. All right.
Q. Then we have, knew about the atomic bomb. Someone who could identify the first book of the bible. Someone who knew who delivered the sermon on the mount and someone who could identify the three branches of federal government or the first US president.
That all calls for knowledge, does it not?
A. I guess it would -- certainly have to be aware that George Washington was the first president in order to answer the -- that you were aware that George Washington was the

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first president.
Q. Right.
Now, the question right here, the 90 percent question, was actually question 12-A from that poll. I will put the question up.
A. Okay.
Q. That's where you drew your 90 percent from, correct?
A. Yes.
Q. But there was another question asked, wasn't there?
A. Yes, there was.
Q. There was a question 12-B that was asked which focused on people's knowledge, what they thought, not what they have heard. Correct?
MR. KRAUS: Objection, Your Honor.
Pursuant to Your Honor's ruling, we were precluded from going into belief issues on direct examination. We were not allowed to bring out the trend in what people believed about the risks of smoking. It's therefore inappropriate since that was at the request of the plaintiffs' counsel that they now be allowed to cross-examine on that issue.
THE COURT: Well, it is appropriate I think to draw the distinction.
I will allow it.
Q. When people were asked in the same poll the next question, whether they thought cigarette smoking caused lung

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cancer, only 41 percent said they believed, isn't that correct?
A. That's as of 1954, yes.
Q. All right. So if you were comparing what people knew on this chart, sir, not just their awareness versus their knowledge, but you would actually put for comparison of knowledge and belief versus knowledge and belief -- this is Mr. Martin Demonstrative 2.
A. Since we're doing that, could I put another one up?
Q. Doctor, let me ask the questions and we will get this straight, okay?

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A. Okay.
Q. If you were comparing not what somebody heard to all these other things that they believed, but what people believed about lung cancer versus their other beliefs as to an atomic bomb was dropped, smoking would be over there in the 41 percent bar based on question 12-B, wouldn't it?
A. In 1954, yes. But not in 1994. It would be over in the 90 percent area.
Q. Now, one of the other things you talked about, doctor, was a statement by Surgeon General Burney.
A. Yes.
Q. That we have informed the public through the excellent coverage, et cetera, et cetera? Do you remember that?
A. Yes.
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Q. You didn't tell the jury what the subject of those hearings were that Doctor Burney spoke at, did you?
A. The Blatnick hearings?
Q. False and misleading advertising by the tobacco industry?
A. Well, that was one of the concerns of Blatnick but there were other concerns as well.
Q. Let's look at AIW-003641 and the title, would you agree with me, is "False and Misleading Advertising"?
A. Yes. For those particular hearings, yes.
Q. Those were the particular hearings at which Surgeon General Burney spoke, is that correct?
A. Yes.
Q. At those same hearings, is it not correct, that a representative of the tobacco industry came and disagreed that it was proven that smoking caused lung cancer? Doctor Little from the CTR? Do you know that?
A. Well, yes. I know about Doctor Little. I thought he was with the TIRC in 1957. I may be wrong about that.
Q. Do you know that the T -- we are both right. TIRC is the predecessor's name for the CTR?
A. Yes, I did know that. I also know that the --
THE COURT: Excuse me. Do not volunteer.
THE WITNESS: I'm sorry.
Q. Doctor, in 1958, did you become aware of the tobacco
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industry sponsored study that came out saying that heavy smokers live longer than people who didn't smoke?
A. I haven't seen that study.
Q. Let's look at Exhibit 80136, science newsletter, May 24, 1958. Study shows heavy smokers live longer. American Tobacco Company employees smoking almost twice as many cigarettes as the general population but live longer and show no more than the average amount of cancer or heart disease.
Do you know that American Tobacco Company was later merged into Brown and Williamson, sir?
A. Yes, within the past several years. Yes.
Q. The statement was made the results of the survey directly contradict the theory that smoking causes lung cancer or heart disease.
Your Honor, we offer 80136 into evidence.
THE COURT: Admitted.
(Marked.)
Q. Did you in the course of your work, sir, ask the tobacco companies to give you copies of the polls that they internally had conducted on smoking awareness among the public?

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A. I didn't ask the tobacco companies for any documents.
Q. Did you ask the lawyers for the documents?
A. For the specific kind of documents you are referring to?
Q. Yes.
A. No.
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Q. Let's take a look at the 1959 poll by the Roper organization. Are you familiar with them, are you not?
A. Yes.
Q. It is Exhibit 76885 point 02. It is entitled "A Study of Attitudes Toward Cigarette Smoking and Different Types of Cigarettes." It is prepared for Philip Morris, Inc, January 1959. This is copy number 27.
I take it, you have never seen a copy of this, any of the copies?
A. Of this particular document, no.
Q. Let's look at the tobacco industry survey. Highlights of the survey. While cigarettes are regarded as bad for you to a greater extent than the other products we asked about, there is surprisingly little concern about the health aspects of cigarettes.
What concern there is in the human health area seems largely --
THE COURT: Excuse me. Health.
MR. WESTBROOK: In the health area, trying to read from it here, Your Honor. Seems largely directed at the avoidance of throat irritation and the consequent search for mildness which seems to be a major asset of filters.
Let's look --
A. Could I ask to see the top of the document, please?
Okay. Then the first page, just -- I just wanted
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to -- to look at the beginning.
Q. The purpose of the survey.
A. Okay.
Q. This study differs from all previous research we have done for Philip Morris in two major ways. Do you know that Roper had done research before 1959 for Philip Morris?
A. It's a survey organization. I would assume they do a lot of survey research for organizations.
Q. But none of which you have seen?
A. I haven't seen this document, no.
Q. Let's turn over to the actual survey where people were asked, the question is, the trouble with cigarettes is that they -- and then they give a number of things to say. Here are the responses. By percentage. You see the number of people who said the trouble with cigarettes in 1959 in this Philip Morris sponsored survey was that they could cause cancer, was one percent? You see that, sir?
A. I guess. I'd want to see the broader context of that, though, the question.
Q. Let's take a look at another question that was asked in the survey. Respondents, a thousand forty-two respondents were asked to rate the danger of various activities. You see where the number of people who thought that the most dangerous activity was smoking was just one percent above climbing in and out of a bathtub?
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A. Yes.
Q. And going for a long swim in a large lake was over twice

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as dangerous as smoking a pack or more of cigarettes a day? You see that, sir?
A. Yes.
MR. KRAUS: Your Honor, could I see a copy of that? I don't believe that was previously identified for us.
THE COURT: Of course. You may examine it.
MR. WESTBROOK: Your Honor, we offer that document into evidence.
THE COURT: That's 776805.02? Is it?
MR. WESTBROOK: I will make sure I have the number right, Your Honor. It is 76885.02, Your Honor.
THE COURT: 76885.02?
MR. WESTBROOK: Yes, Your Honor.
THE COURT: Okay. I'm sorry.
It is admitted.
(Marked.)
Q. One thing you said you didn't particularly focus on was advertising. Did you focus on the fact that the Federal Trade Commission acted against the cigarette companies in the 1950s for their deceptive advertising?
A. I have seen references to that.
MR. BERNICK: Objection, Your Honor, under Rule 403. It is also hearsay. It is also beyond the scope of the
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witness' direct examination.
THE COURT: I will allow it.
Not as evidence they were deceptive. Is that clear, ladies and gentlemen? This is just to test the credibility of the witness.
THE JURORS: Yes.
THE COURT: To see how he reacts.
Q. This is FTC monograph number seven, Your Honor, it's already in evidence. That's Exhibit 80041. This is 1996.
In response to the emerging scientific evidence that cigarette smoking posed a significant health risk to the user, in the early 1950s the major cigarette manufacturers began widespread promotion of filtered cigarettes to reassure smokers that, regardless of whatever unhealthy constituents were in cigarette smoke, filters were a scientific breakthrough.
Advertisements for Viceroy's health guard filter stated, dentists advise smoke Viceroys, the nicotine and tar trapped by the Viceroy filter can never sustain your teeth. Leading New York doctor tells his patients what to smoke. Filtered cigarette smoke is better for health. The nicotine and tars trapped. Cannot reach mouth, throat or lungs.
It goes on and the paragraph finishes, of course, we know today that not only were these claims patently false, but the cigarette companies knew it.
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Now, in your discussion this morning, you didn't talk about any of those advertisements that were coming out at the same time as smoke, smoke, smoke your cigarette and the 1950s films, did you?
A. Was this documents from 1956?
Q. No. This --
A. I am just trying to get the context of the document.
Q. This is an FTC report in 1996 looking back at what they had done in the 1950s acting against the advertising of the industry.
A. Okay.

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Q. In your testimony this morning you didn't talk at all about the information the industry was putting out in its advertisements at the same time as the Tex Williams song was coming out and the 1950s films about give me a nail?
A. No, I didn't talk about that.
MR. WESTBROOK: This might be a good time for a break.
THE COURT: Take a short break.
(The following occurred in the absence of the jury.)
MR. BERNICK: Your Honor, I have a motion for a mistrial based upon the last line of examination. One hundred percent squarely in the face of all the discussions we have had with the Court, the counsel for the Trust just put before the jury deceptive advertising, false claims and ads about

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advertising. Never been part of the case. Not part of the theories of the case. He did it through agency action before the alleged conspiracy that gives rise to the case. These are ads before 1955. The whole issue was gone over extensively in connection with the discussion of advertising. Never been permitted to claim that the advertising was misleading and made a health claim. The only thing that's been a part of the case is that the ads somehow had the effect of neutralizing or diminishing the impact of the antismoking campaign and events that incidentally didn't take place until the 1960s. We now have a case where according to counsel's questions the jury is to focus on whether our ads were misleading and made misleading health claims. This is just -- in the middle of our case no less.
MR. WESTBROOK: Your Honor, Professor Martin --
THE COURT: This witness has gone back to colonial times. I don't understand what the date has to do with it. He could be cross-examined on anything over a four hundred fifty year period.
MR. BERNICK: No. Your Honor, if that's -- if that were true, there is no limit to the case and there is no theory to the case.
THE COURT: This witness has put himself forward as a person who knew what was going on over a period of hundreds of years. I don't understand what the fact that this was a 1950s

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matter has to do with unfairness.
MR. BERNICK: Several points. This witness was proffered to testify about what was common knowledge, what was known. This witness never offered a single word that the ads did or did not make health claims.
That entire subject matter, whether ads made health claims, is not part of the case. We took pains to avoid it. The jury was instructed with regard to advertising.
THE COURT: Write something out if you wish. I will give it to the jury. It does seem to me if the witness comes forward, for example, with respect to nails and little snippets of film, it is appropriate to ask him what effect does he think other films in which sensuous men and women are smoking away and what effect advertisements showing still lives of all of these glamorous creatures smoking away have. What's the objection? I don't understand.
MR. BERNICK: Didn't even do that. That wasn't what was offered. That wasn't what was proffered. He wasn't asked whether ads affected common knowledge with regard to cigarettes. He was asked, are you familiar with the fact that

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these ads were attacked as being misleading by making misleading health claims.

THE COURT: Write something out. If that's the specific objection, write something out. I will give it to them. But your motion for mistrial is denied.

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You can step down.

THE WITNESS: Thank you.

(Continued on the next page.)

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THE COURT: Don't bring in the jury yet.

Defense counsel has handed me Court Exhibit 62, reading as follows: "You have heard reference to claims that certain ads in the early 1950s made improper health claims. This case does not concern commercial advertising and whether it was proper or improper."

Well, it does indirectly because it has the effect, as I indicated, of negating some of this material this witness has relied upon.

MR. BERNICK: It is squarely at odds, your Honor. That very issue was before the Supreme Court in the Cippolone case. That issue, that very issue, and we'll brief it to the court - I believe we already have -- was squarely at issue.

THE COURT: We're not talking about what is on the advertisement as prose, we are talking about the indirect effect, as this witness has suggested in his Philip Morris snippets.

MR. WESTBROOK: We're also not talking about anytime that --

THE COURT: Excuse me. I didn't ask for your input at this point.

Then you go on: "The questioning was permitted solely to determine the witness' familiarity with the subject."

I'll give the first and last sentence but not the

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middle sentence. I've already told them that there's no claim with respect to the Federal Trade Commission.

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MR. BERNICK: The issue here is whether there is before the jury the question of whether the advertising made false health claims.

The jury cannot determine that issue without directly getting into the question of FTC regulation of the ads. That's what the FTC -- the whole FTC regulations was adopted precisely for that purpose.

THE COURT: With respect to prose, P-R-O-S-E.

MR. BERNICK: The FTC does not just determine the numbers on the ads --

THE COURT: I will tell them that this case does not concern commercial -- the prose in commercial advertising --

MR. BERNICK: Fine.

MR. WESTBROOK: Your Honor, for the record, there is nothing preempted by any stretch of the imagination that went on in the 1950s, your Honor, which is where we are now.

THE COURT: That's correct. And the legend was required as of what date?

MR. WESTBROOK: 1966, but I don't think there's a claim --

THE COURT: What? Sorry?

MR. WESTBROOK: I don't think there's any claim of preemption until '69, your Honor, at the earliest.

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MR. BERNICK: No preemption as to the warnings portion, that's correct. That is not the issue. That's why I agree with your Honor's statement regarding the instruction.

THE COURT: The legend was required as of what date?

MR. BERNICK: Your Honor, the legend --

THE COURT: Excuse me, I'm talking to the plaintiff now. The legend was required as of what date?

MR. WESTBROOK: The warning label that brought about preemption first came into effect in 1969, I understand.

MR. BERNICK: That is the warning label.

THE COURT: Yes.

MR. BERNICK: That is not what the --

THE COURT: The warning legend was required as of 1969 --

MR. WESTBROOK: 1969 is the label that has preemption attached to it.

MR. BERNICK: If that's going to be --

THE COURT: When was the warning first required?

MR. WESTBROOK: '66, your Honor.

THE COURT: '66?

MR. WESTBROOK: Yes, your Honor.

THE COURT: Required as of 1966 by the government.

MR. BERNICK: That is not -- if your Honor is going to get into that, then we also have to tell the jury that the

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FTC legislated content of ads. The very thing that he pointed to was the FTC monograph that dealt with the history of the content --

THE COURT: When was the content?

MR. BERNICK: 1955. Actually, it was before that, but --

THE COURT: Content was -- I don't think I'm going to get into that -- was regulated by the FTC as of 1955. I'm going to tell them just what I said.

You've heard reference to claims that certain ads in the early 1950s made improper health claims. Ignore any

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reference to FTC rulings on that score, any possible reference was permitted solely to determine the witness' familiarity with the subject. That's what I'm going to tell them.

Bring in the jury.

MR. BERNICK: Your Honor, one other thing, and that is that part of the reason we are running into this problem is that your Honor specifically foreclosed us from calling the expert witness that we had in the FTC and in the history of advertising.

Dr. Scheffman was going to address the subject specifically, and we have been prevented him from bringing him to this courtroom.

THE COURT: What subject?

MR. BERNICK: The whole question of what was in the

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ads, why it was in the ads, and, you know, how that history evolved and what effect it had. That was exactly the subject of his testimony.

THE COURT: What effect the ads had?

MR. BERNICK: Yes.

THE COURT: Well, this witness is telling us that.

MR. BERNICK: He can speak to that from the perspective of a historian. Now he's getting cross-examined about the aspects of what the FTC did, what the ads said.

This is something that is only a very, very small piece of common knowledge --

THE COURT: What the FTC did and said is out of the case.

MR. BERNICK: He's put -- he's put it in the case repeatedly. It's just a fact that it's there. This is not -- if your Honor wants, we can give you the long list of documents that he has read to the jury very deliberately to take on the whole question of low tar cigarettes, what was said about low tar cigarettes, claims about whether they were safe, whether they were dangerous. It's throughout the whole case. That's why I just moved for the mistrial, because they put it in issue.

THE COURT: I really find it almost impossible to follow your argument, and I'm sure it's due to my own obtuseness -- your argument is always so crystal clear, but I

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don't understand why, when he gets up on the stand and tells us, with document after document, and opinion after opinion, that everybody is aware of the problems with smoking, he then can't be cross-examined with respect to his credibility when advertising is implicated.

That is being put out into the common knowledge fund that he's talking about.

MR. BERNICK: But then the cross-examination is that you're not an expert in the content of advertising. He was never proffered as an expert in the content of advertising.

THE COURT: I find this so difficult to understand because our economy is so full of advertising; it permeates the atmosphere. There is more advertising in the atmosphere than there is oxygen. We live on advertising.

MR. BERNICK: Why can't we call a witness who is an expert in advertising, as we originally proposed, to deal with --

THE COURT: To say what?

MR. BERNICK: To deal with exactly that issue, what was in the advertising and what impact it had on the

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marketplace.
THE COURT: In connection with all of this other stuff?
MR. BERNICK: Well, that's what --
THE COURT: That's what this witness is talking
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about.
MR. BERNICK: This witness is a historian that is here to talk about --
THE COURT: Let's not denigrate historians. He's talking about what people were fed by these various resources. They get this things some school. Even today, the schools start with advertising. Channel One, that's the way the students start. They may be told, don't smoke cigarettes, or don't do this, but they get advertising.
MR. BERNICK: Your Honor, I know -- I don't want to hold up the jury --
THE COURT: I'm just dealing with this witness and credibility.
MR. BERNICK: We have our motion for a mistrial --
THE COURT: That is denied.
MR. BERNICK: I have a motion to give the instruction as we propose to the court --
THE COURT: Denied. I'm going to give it as I wish.
MR. BERNICK: Then I have a further motion to permit us to call Dr. Scheffman.
THE COURT: That I will hear at an appropriate time --
MR. BERNICK: Thank you.
THE COURT: -- in a latter session.
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Bring in the jury.
(Jury present.)
MR. WESTBROOK: May I proceed?
THE COURT: Ladies and gentlemen, this witness was asked, and there was reference to claims that certain advertising ads in the early 1950s made improper health claims.
As I have already told you, the questioning was permitted solely to determine the witness' familiarity with the subject. The references to what the FTC may have said or done have no bearing on whether the defendants did anything wrong.
Is that clear?
JURORS: Yes.
THE COURT: Okay?
JURORS: Yes.
THE COURT: I see Juror No. 2 is shaking his head. All right. Continue.
MR. WESTBROOK: Thank you, your Honor.
BY MR. WESTBROOK:
Q. Dr. Martin, where we are, I was just bringing us back on your direct. You referenced a song in 1947 by Tex Williams, and you showed some Philip Morris clips, which I think you portrayed as indicating that smoking was hazardous and using derogatory terms like coffin nail and some addiction
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information, and Heaven knows Mr. Allison, I saw there, and some others.

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At the same time that this was coming out, these records and the Philip Morris clips, you're aware, are you not, that the tobacco industry itself was putting out advertising that glamorized smoking, are you not?
A. Well, I'm aware that there were advertisements, yes.
Q. For instance, the cigarette industry put out advertising showing sports figures, leading sports figures of the day that smoked?
A. Yes.
Q. Such as Mickey Mantle?
A. I can't -- I'm not sure about The Mick.
Q. You better know Mickey Mantle up here.
A. Well, from Oklahoma. I'm not going to question that.
Q. This is 76050.0135 --
THE COURT: Say that again.
MR. WESTBROOK: 76050.0135, from Reynolds. "Why Camels are First with Famous Sports Stars."
Q. And Mickey Mantle was very popular in the early 1950s as a baseball player, was he not?
A. He was the best.
Q. You and I agree on something.
A. Okay.
Q. And you are familiar with Lenny Lyles, Baltimore Colts

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halfback from the early sixties?
A. I should be, but I don't think I am.
Q. That's 76050.0468. "Viceroy's got the taste. That's right, says Lenny Lyles, right halfback, Baltimore Colts."
In addition to showing sports figures, shortly after that Tex Williams song came out about smoke that cigarette and smoke them to death, the industry came out with ads where doctors were said to be endorsing smoking.
Do you recall that happening in the fifties? You were alive back then.
A. I'd want to see the advertisement in terms of the characterization, please.
Q. Let's look at 76050.0145, from November 17, 1952?
THE COURT: Give me the number again.
MR. WESTBROOK: 76050.0145.
Q. This is a color picture and not very easy to read, Doctor. "Leading New York doctor tells his patients what to smoke."
See that, sir?
A. Yes.
Q. Advertisement for Viceroy.
MR. BERNICK: Do we have a date for that ad?
MR. WESTBROOK: November 17, 1952.
Q. We've got 76050.921, which is Life Magazine. I think you showed some Life in your direct, didn't you?

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A. Yes.
Q. Widely circulated publication?
A. Yes.
Q. From February 15, 1954. "Smokers: Here's proof you can see. Kent gives greater protection than any other cigarette."
Here's an ad from the 1960 from P. Lorillard, 7 --
THE COURT: What is the last number?
MR. WESTBROOK: The last one, the Kent was 76050.921.
This 1960 ad from Lorillard is 76050.922. "All over

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America more scientists and educators smoke Kent with the Micronite filter."

One more in this group, Doctor, from Life, March 8, 1954, 76050.924. "To all smokers of filter tips. This is it. Just what the doctor ordered.

Q. That would be about seven years after the Tex Williams song about Smoke Yourself to Death, correct?

A. I would guess that would be about seven years or so.

Q. Now, in addition to those ads we saw, you are familiar, are you not, that during the same years that you showed some Philip Morris clips, the forties, fifties and sixties, which had derogatory comments to cigarettes, that there were celebrity advertisements, that is advertisements that used famous celebrities smoking cigarettes, that came out in the

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public press and were sent to the public; are you familiar with that, sir?

A. Yes.

Q. Do you recall Dragnet with Jack Webb?

A. Yes.

Q. Very popular figure in the fifties?

A. Yes.

Q. This is Exhibit 76050.9 11, Life, March 22, it appears, 1954.

"Like I tell you on Dragnet," signed by Jack Webb. "No adverse effects to the nose, throat and sinuses from smoking Chesterfield."

Both these statements are a matter of record. Jack Webb was somebody that people trusted in America in the fifties, was he not? He got the facts and only the facts?

A. I would guess so, but I can't say for sure.

Q. Remember on his show he was always asking just the facts?

A. Just the facts, ma'am.

Q. Yes, just the facts, ma'am.

Let's look at one from 1954, 76050.913. Did you know Eleanor Stebey, brilliant soprano of the Metropolitan Opera?

A. No, I didn't.

THE COURT: This is 913?

MR. WESTBROOK: Yes.

Q. "Famous opera star tells why she changed to Camels."

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So we have an opera star smoking Camels. That would certainly give a message that Camels aren't going to bother your throat, would it not?

A. I can't draw any conclusions from that. That would be speculation on my part.

Q. Doctor, have you taken a look to see how much money the tobacco industry spent just on advertising, that is on TV advertising, radio advertising, newspaper advertising, magazine advertising, outdoor billboard advertising, billboards and transit, on buses and things like that?

Just those categories of straight advertising, do you know how much the industry spent on just those categories of advertising in 1960 through to 1998.

THE COURT: Don't answer. There's an objection?

MR. BERNICK: I'm not sure how the question has been put, but your Honor has ruled on this on two different occasions. This is not before the jury.

MR. WESTBROOK: This is just advertising.

THE COURT: He's not talking about other aspects of their expenditures.

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MR. BERNICK: Purely print advertising?
MR. WESTBROOK: TV, radio, news, magazines, outdoor and billboard --
MR. BERNICK: All right.
A. Yes, I've seen various figures.
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Q. Would it surprise you that from the FTC reports, just adding up those categories of advertising only, not promotion, that the industry spent over 19.5 billion dollars in that advertising?
A. I have no way to prove those figures one way or the other.
MR. WESTBROOK: Your Honor, we have a chart which is Plaintiffs' Martin 1-B, which is from the FTC report, which takes just those selected categories of advertising and puts them year-by-year.
THE COURT: All right. You can show it.
Q. Doctor, let's take a look just a minute. Can you see that on your screen, sir?
A. Yes.
Q. Can you see that according to the chart back in 1963, which by the way, Doctor, is the earliest years that the FTC report has the figures, the industry was spending over 200 million dollars on these categories of advertising, do you see that, sir?
A. Yes.
Q. And that the number never went below approximately 150 million dollars a year?
A. Are you talking about in the 1970s here?
Q. Yes, sir.
A. Okay. Do these figures account for inflation, by the
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way?
Q. This is reported to the FTC, however the industry reported it to the FTC, sir.
A. Okay.
Q. If the numbers didn't account for inflation, these figures would be higher, I guess inflation adjusted, wouldn't they?
A. I don't know. I was just curious.
Q. You talked about Dr. Selikoff's budget and counsel asked you about didn't Dr. Selikoff have a 300,000 dollar grant here, a 700,000 dollar grant there. I think you said one year he got a million dollars from the American Cancer Society.
Do you remember that testimony on direct?
A. Yes. Uh-huh.
Q. Do you know, sir, if Dr. Selikoff was ever given one penny by the tobacco industry to do his work?
A. One penny?
Q. Was he given --
A. I'm not aware of that, no.
Q. Now, you entertained us the other day, I forget when it was, with some clips of some shows, and I want to take a look at some other things with you that were shown to people at or about at the same time as some of the clips that you showed.
First, I want to show you a couple of commercials for cigarettes and see if they jog your memory as commercials that
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were widely disseminated in the 1950s and 1960s, according to the dates on the screen.

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MR. WESTBROOK: Your Honor, can we have the lights down? Some of these are not the best quality.
THE COURT: Are they numbered? Is there a number attached to this?
MR. WESTBROOK: Your Honor, we will give it a number. These are Martin Videos 1, 2, 4 and 8 will be the first ones.
THE COURT: Martin Videos 1 --
MR. WESTBROOK: 1, 2, 4, 5 and 8. These are run together, your Honor, so I will tell the jury that it's a Marlboro ad, a Winston ad, a Kent ad, a Lucky Strike ad, and then a Salem ad, that's what we're going to see here.
(Videotape plays.)
(Videotape stops.)
Q. Just a question, Doctor. Those people didn't seem to smoking themselves to death like the Tex Williams song talked about, did they?
A. I am not an advertising expert, and I really can't comment.
Q. You did show us some movies and some film clips --
MR. WESTBROOK: And we have a few, your Honor, that I'd like to show the doctor and get his reaction.
THE COURT: Movies? Does this have a number?

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MR. WESTBROOK: These will be Martin Videos 3, 6, 7 and 9, your Honor. They are a movie clip and some TV show clips.
Q. You want to take a look, Doctor, take a look and see if smoking is being depicted in these films the way it was in the ones you showed.
Remember the original of this?
(Videotape plays.)
(Continued next page)

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EXAMINATION CONTINUES
BY MR. WESTBROOK:
(Video stops.)
Q. Doctor, you didn't see in any of those clips any reference to cigarettes as being harmful or coffin nails or anything like that, did you?
A. These were cigarette advertisements on television in the early to mid-fifties if I am not mistaken.
Q. Were you aware, sir, that the cigarette companies actually sponsored the whole show and worked those clips into the show itself?

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A. I haven't seen -- I couldn't verify that one way or the other. These were adult evening programs, so far as I know. There was a lot of cigarette advertisement on TV in the 1950s, unlike the 1970s when it wasn't on TV.
Q. The cigarette advertisements on the part of those shows that we showed and you will agree that overwhelmingly it depicted cigarettes as a pleasant healthful thing to do, didn't it?
A. Well, didn't see too much the other way, no.
Q. Let's look at a couple of movies, if we can.
MR. WESTBROOK: Your Honor, could we have the lights down one more time? We now have --
THE COURT: What are these?
MR. WESTBROOK: These are movies, Your Honor. This

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is in the cinema.
THE COURT: I understand. What's the numbers? That's all I am interested in.
MR. WESTBROOK: I didn't understand what you were saying, Your Honor.
The numbers will be -- it will be Martin movie one, two, three, four, five and six.
THE COURT: Okay. Go ahead.
(Video plays; video stops.)
THE COURT: I didn't understand that one. Stop it for a moment.
What was that about?
MR. WESTBROOK: Marlon Brando blowing smoke in somebody's face. It wasn't socially unacceptable apparently. He blew smoke in somebody's face.
THE COURT: I see. Go ahead.
(Tape plays; tape stops.)
Q. Did you notice the doctor smoking in that one?
(Tape plays; tape stops.)
Q. Doctor, would you agree with me --
THE COURT: Is that the end of the films?
MR. WESTBROOK: Yes, Your Honor. We have one short clip on another subject. That's the end of that piece.
Q. Doctor, would you agree with me that the vast, vast majority of movies over the decades depicted smoking as a

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pleasant activity and there wasn't predominant reference to coffin nails or nails like those few clips you showed?
A. Well, with respect to this group, I am not sure that last gentleman seemed to be enjoying himself smoking the cigarette. But I am also -- should point out that Humphrey Bogart was a very well known actor. Was a smoker and he died of lung cancer. That was also very well known in the 1950s. He was one of the characters depicted here.
Q. People going to the movies and saw Humphrey Bogart smoking and Marlon Brando smoking, they didn't know at the time these people were going to die of lung cancer?
A. That's right.
Q. Are you aware, sir, that cigarettes don't show up in movies just out of happenstance, that in many instances the tobacco companies in the past have paid money to have cigarettes put into the movies? Did you know that, sir?
A. I have heard that accusation. I've never studied it and I don't have any proof that's true or false.
Q. All right. Let's look at a document produced by Reynolds, which 37087, which is a May 4, 1981 letter from a

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public relations company of Rogers and Cowan to Mr. Gerald Long of RJ Reynolds.

THE COURT: This is number?

MR. WESTBROOK: This is 37087, Your Honor.

THE COURT: Yes.

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Q. It says, second paragraph, now that we are a couple of days into our second year with RJ Reynolds, I wanted to recap some or our activities during the past twelve months and give some of our ideas for the upcoming year.

We are in 1981. Are you with me, doctor?

A. Yes.

Q. Okay. Talking about their activities. Placing products in important pictures and television programs with popular stars. We have contacted literally hundreds of films to determine, one, if the film could offer us positive exposure. Two, if the stars were people with whom we would want the product associated, and three, if we could work the products into the scripts. Among the films that met our criteria in which we were able to place products were: You see the listing of films there?

A. A hum.

Q. The Jazz Singer with Neil Diamond? Cannonball Run, Burt Reynolds?

A. Right.

Q. It goes on, and many, many others.

Let's look at some of the other activities reported to Reynolds being done.

Next, writing and placing favorable stories about celebrities' smoke, such as a recent shot we arranged on Good Morning America about Paul Newman practicing lighting two

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cigarettes for a remake of Now Voyager, and stories we placed about Mikhail Barizhnikov smoking four packs of cigarettes a day as part of his routine.

Doctor, did you know that the industry was actively involved in placing people smoking on TV and in the movies?

A. Could you back this up? Because it's really not clear to me who is writing this letter, who it is coming from. Is this -- is this from some sort of a public relations firm?

Q. Yes, sir. Working for RJ Reynolds, reporting to RJ Reynolds, Mr. Cowan reporting to RJ Reynolds on the activities on behalf of Reynolds.

A. Okay. The first -- I'm sorry.

Q. I had a question for you, doctor.

A. Okay.

Q. My question is, did you know before we looked at this document that the industry was actively involved in placing people smoking on TV shows and in movies that just didn't happen by happenstance? Did you know that?

A. I've --

Q. Doctor, did you know that, yes or no?

A. I can't answer the question yes or no.

Q. You didn't know whether you knew it or not?

A. I can't answer the question yes or no because I have to look at this document and this document suggests --

THE COURT: Excuse me.

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Show him the whole document. The witness is entitled to see the document.

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Q. My question, so you will have it in mind, sir, did you know of this practice of the industry placing cigarettes in movies and TV shows?
A. I am not denying that public relation agencies --
THE COURT: Excuse me, sir. You have a question. You asked for the document. Look at the document and then answer the question.
(Pause.)
THE WITNESS: Okay.
Q. Do you remember my question?
A. Yes.
Q. Did you know of this practice, sir, by the industry?
A. I can't answer that question. I'm sorry. I just don't know how to answer it.
Q. All right. Let's look at some other things reported in 1981 to Reynolds that this company was doing for Reynolds.
Encouraging smoking on television is another area and our work in this area ranges from our personal contacts with celebrities encouraging them to smoke on the air, to supplying the green rooms of the major TV talk shows, it lists them, the quantities of the product for their guests.
Do you understand the green rooms are the rooms where guests get ready to go on to talk shows?

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A. Certainly, yes.
These are proposals that are being made or are these things that were actually done? I can't tell.
Q. The first page of the document says, we ran some of our activities during the past twelve months and give you some of our ideas for the upcoming year.
Do you see that, sir?
A. Right. The reason I am not trying to be difficult, I don't know whether these were actually accomplishments or not. I don't know whether these things were accomplished.
Q. Let's look at this one and see if you can determine whether this was accomplished or not.
During the last few days, we have been able to get Zha Zha Gabor and Harold Robbins to smoke during the taping of a nationally syndicated Merv Griffin show which will air next month. You see that, sir?
A. Yes. It sound like --
Q. No doubt in your mind, that was accomplished?
A. Yes.
Q. Let's look at the document from Brown and Williamson. That was a Reynolds document. We're going to switch to another company now.
This is Exhibit 742.
A. Okay.
Q. This report summarizes the results of our review of the

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company's movie placement relationship with Associated Film Promotions.
Background, B and W, you understand Brown and Williamson is often referred to as B and W?
A. Yes.
Q. B and W entered into an agreement in July of '79 whereby AFP -- that's the company?
A. That's -- is that the PR firm?
Q. Right.
Agreed to attempt to place B and W advertising and products in selected new movie productions.

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Let's go down here. B and W payments to AFP since the inception of the contract have totalled six hundred eighty-seven thousand dollars -- sixty-seven thousand five hundred for special placements and two hundred seventy-eight thousand dollars in retainers.

There is a listing of some of the -- what's called the special motion picture placement. B and W has made payments to AFP for the following special placements.

Some of the movies are listed there. Do you recognize Never Say Never Again? Where the Boys Are? Then at the bottom there is a listing for five movies by Sylvester Stalone which he was going to be paid three hundred thousand dollars.

Do you see that?

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A. Yes.

Q. Did you know, sir, that Brown and Williamson was also engaged in placing cigarettes in movies and paying to have that done? Did you know that?

A. I know products are placed in movies so -- yes.

Q. You knew cigarettes were in movies but did you know that the tobacco industry was paying to have them put in movies?

A. It's true of many products.

Q. Did you know that the tobacco industry was paying to do that?

A. I do now.

Q. Next is 318, which is a letter of April 28, 1983 from Sylvester Stalone to Mr. Bob Kovaloff, Associated Film Promotion, AFP.

Dear Bob, as discussed I guarantee that I will use Brown and Williamson tobacco products in no less than five feature films.

It is my understanding that Brown and Williamson will pay a fee of five hundred thousand dollars.

Did you know about this relationship where Sylvester Stalone was going to get half a million dollars to use Brown and Williamson cigarettes in five films?

A. I do now.

Q. Let's switch companies to Philip Morris.

Here is a document produced by Philip Morris which is

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14664, which is entitled List by Year of Movies for which Product was Supplied in Connection with Charles Pomerantz and Andrew Varela.

I will just show you the first page, sir. I will represent to you that it's got years from '78. Products supplied 1978, do you recognize some of those films, sir?

A. What does "product supplied" mean? Is that -- is that explained here at the beginning?

Q. Doctor, do you think Philip Morris was supplying something other than cigarettes for these movies?

A. That wasn't -- I'm sorry. I didn't mean that. I don't know whether products supplied mean product was used.

Q. This is the document as we have it.

A. Okay.

Q. So let's take a look at the movies. We have Jaws, Grease; you recognize some of those?

A. Yes.

Q. All right. Then skipping to the last page of the document.

A. Why don't we go maybe through the whole thing, would that

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be possible?
Q. Not with the time. It's year after year, '79, '80, if your counsel wants to show you each year. I will put the whole thing into evidence. We will have it all. It finishes up, the last page of the document, is product supplied for
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1988. This covers 1978 to 1988.
Do you recognize some of those titles, Who Framed Roger Rabbit?
A. It was a cartoon.
Q. Rated PG.
A. Who Framed -- wasn't that a cartoon?
Q. Wasn't it a combination of cartoon and people acting together? Do you remember that?
A. Maybe it was. I thought I remembered it as a cartoon.
Q. Field of Dreams, et cetera?
MR. WESTBROOK: Your Honor, we offer 14664 and the previous movie placement documents into evidence.
THE COURT: Admitted.
You will supply a list of those used on cross, please.
MR. WESTBROOK: Yes, Your Honor.
(Marked.)
MR. WESTBROOK: Your Honor, could we have the lights down one more time? We have one final clip to take a look at the films.
THE COURT: What is the number?
MR. WESTBROOK: Martin video next, which would be -- this is the one that's three. This is movie three. This is just one of the clips we didn't show from the previous segment.
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THE COURT: I see. Okay.
Q. Do you remember the movie Superman?
A. 1978. Right?
Q. Superman Two?
A. Superman Two. Okay.
(Tape plays; tape stops.)
Q. Doctor, would it surprise you that the Marlboro truck did not appear in that movie just by happenstance?
A. Well, I don't know.
Q. Let me ask you to take a look at a review of cigarette advertising that we have received dated 1976, Cigarette Advertising History Document, produced by Brown and Williamson, which is 21347 by Mr. Latimer to Mr. Broecker. Subject, Cigarette Advertising History.
I am going to ask you about this statement. First of all, made in this 1976 document.
Good cigarette advertising in the past has given the average smoker a means of justification on the two dimensions typically used in antismoking arguments.
Were you aware, doctor, that the industry internally viewed cigarette advertising as giving smokers a means to justify their habit in light of antismoking arguments?
A. I'm sorry. Could you go back to the top of the document, please?
Would you perhaps broaden it out just a bit here? I
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am trying to read the first paragraph.
Q. You want to see the first paragraph?
A. Yes.

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Q. This briefly analyzes the two volume cigarette advertising history. The basic assumptions form the core of my analysis.
Have you seen the two-volume cigarette advertising history?
A. I am not aware of this particular history. As -- as a historian, I wonder what kind of history this might be.
Q. That's a history? History you haven't seen?
A. There is probably a lot of history I haven't seen.
Q. Sure.
A. I don't know whether this is a public document or not.
Q. Well, so we won't spend too much time. Is it a fact that you haven't seen Brown and Williamson's discussion of what cigarette advertising was intended from the part of the company to be? You haven't seen this?
A. I am having a hard time reading it. Average smoker means -- I see, yes. That's what they said.
Q. You will agree with me that this does discuss advertising history, does it not?
A. Yes. One individual here, is talking. I don't know who the individual is. I'm sorry.
MR. WESTBROOK: Your Honor, we offer -- we offer

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21347, Brown and Williamson memorandum.
THE COURT: Admitted.
(Marked.)
Q. Doctor, you talked on direct about the coverage of the cigarette smoking controversy in the media over the years. Are you aware, are you not, that the Colombia Journalism Review back in 1963 took a look at the coverage of the smoking and health controversy at the time it was happening and concluded that there were confusing messages being sent out through the media? Are you familiar with that document, aren't you?
A. Yes. I have read that article and I would interpret it differently but --
Q. Let's -- is the document Smoking and News Coverage of a Decade of Controversy?
A. I believe, yes. I believe it's in the 1963 Colombia Journalism Review. Is that correct?
Q. Correct, sir.
A. Okay.
MR. WESTBROOK: Your Honor, that's Exhibit 80626.
Q. I am turning over to the conclusion of the article.
Coverage has been sufficiently fragmented, uneven and affected by publicity efforts on both sides to cause confusion. You see that, sir?
A. Yes.

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Q. An important place for clarifying confusing news, the editorial page, has been little used. Only a few individual organizations have come close to giving the issue the kind of in-depth accounting that would seem to be owed to the public. Here journalism has failed to assume the kind of initiative that it has shown in many other issues of public health.
You will agree with me that in 1963, researchers looking at the time at the coverage concluded that it was fragmented, uneven and affected by publicity efforts on both sides?
A. That is the conclusion of that article. That is not my conclusion.

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Q. You disagree?
A. That's correct.
MR. WESTBROOK: Your Honor, we offer 80626 into evidence.
THE COURT: Admitted.
(Marked.)
Q. You talked about the 1964 Surgeon General's report. What day did you say that came out?
A. Well, I believe the meeting was on January 11, 1964. In the State Department.
Q. Are you aware, sir, that eighteen days after the Surgeon General's report came out, that the tobacco -- one tobacco company, Philip Morris, internally considered what they were
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going to do in response to that report and how to reassure smokers?
A. I have seen a Hill and Knowlton survey on the subject.
Q. This is Plaintiffs' 12501. From Mr. Weissman to Mr. Cullman, re, Surgeon General's report. Can you make that out through the background of the bad copy?
A. I can see Cullman and Weissman.
Q. All right. Surgeon General's report?
A. Yes.
Q. Okay. And this would be about eighteen days after the report came out?
A. The 29th?
Q. Yes. It looks like the 29th?
A. That's correct.
Q. Okay. So we've got reaction and then public relations program. It says, however, at some point reflecting the same seriousness with which we met the report, we must in the near future provide some answers which will give smokers a psychological crutch and a self-rationale to continue smoking. You see that, sir?
A. Yes.
Q. Have you looked into the efforts the industry made to give smokers a psychological crutch to continue smoking?
A. I have looked at hundreds of articles in newspapers during January of 1964 and I have seen none of that
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information in any of those articles that was being made available to the public.
Q. Are you aware that one year after the Surgeon General's report came out that smoking had gone back up to the levels it was before the Surgeon General's report?
A. I know the figures bounced around during that time frame.
Q. My question, sir, did you know that by one year after the Surgeon General's report, which you said was the most covered I think media event maybe of the century?
A. Yes, I did.
Q. One year after that, the levels of smoking had gone back up to the same level as they were before the report? Did you know that?
A. It may well be true.
Q. Did you know that the industry after the Surgeon General's report conducted their own internal reviews to see what people knew and didn't know after the Surgeon General's report about smoking and health?
A. I mentioned the Hill and Knowlton report which I can't give you an exact date on but I believe that that was sometime

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toward the latter part of January of 1964. That would be one document that I am aware of, yes.
Q. Let's look at an internal report from Philip Morris which is 8023, which is dated October 25, 1966. The semiannual
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report, physiological studies.
In the 1966, this statement is made by Philip Morris internally.
Although it is recognized as a prominent problem by medical authorities, the public is not fully aware of the relationship between cardiovascular disease and cigarette smoking.
Have you seen the studies on which Philip Morris based this conclusion in 1966?
A. No, I haven't.
Q. Have you looked at the Department of Health, Education and welfare poll conducted in 1966 to survey consumer attitudes about smoking and health, two years after the Surgeon General's report?
A. I can't say for sure.
Q. Let me show you Exhibit 50093, which is entitled Use of Tobacco, Practices, Attitudes, Knowledge and Beliefs, United States, fall 1964 and spring 1966 from the Department of Health, Education and Welfare, which is Exhibit 50093.
I want to focus for a minute on this question from 1966. You see the date down here is 1966?
A. Yes.
Q. Okay. This was the question asked: Before people will be convinced that cigarette smoking is harmful to health, the tobacco industry itself has to say that smoking is harmful to
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health.
We strongly agree and mildly agree. You see the totals all the way over to the right-hand side, about 56 percent of men strongly or mildly agree that the tobacco industry itself would have to stay that first before they'd believe it?
A. It doesn't square with other numbers from the sixties but I guess I see it.
(Continued on the next page.)
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BY MR. WESTBROOK:
Q. Doctor, if you would just answer my question, we'll move along. Do you see that 56 percent of the men are listed as

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strongly or mildly agreeing that the Tobacco Industry would have to say smoking was harmful before they would be convinced about it?

Do you see that from the poll?

A. I'm sorry. I can't read it. What are -- where it goes across and says never, ever, former, current, is that referring to categories of people?

Q. Smokers, never smoked, ever smoked, former smoked, current smoked; do you see that, sir?

A. Okay.

I see it. I understand.

Q. Back to my question now?

A. Yes.

Q. Do you see that the total, 56 percent of the men agreed and 64 percent of the women agreed that before they would be convinced that cigarette smoking was harmful the Tobacco Industry would have to come forward and say that smoking was harmful? Do you see the poll shows that?

A. That's what it says.

Q. Are you aware that when consumers wrote into the tobacco companies about smoking and health, that they would write in and tell the Tobacco Industry the same thing, they wanted to

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know the Tobacco Industry's view?

A. I'm sure that may have happened. I have not seen those studies, no.

Q. Let's take a look at Exhibit 44354, which is March 30, 1976 from Mr. Cahill, the public relations department of R.J. Reynolds: "The brochure you sent me on smoking was very interesting, as I have never heard both sides of the smoking controversy. I have accepted your views on smoking. If you could possibly send any more pros and cons on smoking I would sure appreciate it as the men at work have become interested in this matter also."

Did you know, sir, that consumers were writing in and were actually having their views affected by what the industry told them?

A. As a historian I can't say anything about this letter, because there are huge sections of it that are blacked out. I don't know what the context is, so I can't comment on it.

Q. Do you understand, sir, that the pieces that are blacked out are blacked out because of rulings here in the case?

A. I'm sorry. I didn't know that.

Q. Okay. I didn't want you to think we were keeping something from you.

A. I didn't have any idea.

Q. Doctor, you mentioned on direct something about Dr. Selikoff getting the word out to physicians and Dr. Richmond

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getting the word out to physicians about smoking and health. I think your statement was that the theory was that physicians would then talk to the patients and then get the information out to them, correct?

A. I believe that's what Dr. Richmond was encouraging in his letter, yes.

Q. Going back to our HEW poll, 2019, let's look at the question which asked about this issue and I'll bring it in so you can read it: "Have you ever talked with a doctor or has a doctor ever talked with you about cigarette smoking and health? Did he say that cigarette smoking was:"

And then it gives a list of things that the doctor

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would have said and there's a category down here, didn't talk with doctor about smoking.
Do you see that?
A. Yes.
Q. And see there, sir, that 71 percent of the men and 79 percent of the women representing about forty-three hundred people who answered this poll hadn't talked to the doctor at all about smoking; do you see that that poll says that?
A. I'm sorry. I'm really confused. Is this 1978 or is this a different year?
Q. This is the HEW poll in 1966 about people talking to their doctors.
A. I'm sorry. You asked me about Dr. Richmond in 1978.

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It's a twelve-year difference. Yes, that's what it says in 1966.
Q. All right, sir.
Let's look in 1966 at another question from this poll, two years after the Surgeon General's report: "Are you in any way concerned about the possible effects of cigarette smoking on your health? Would you say you were:"
Do you see down there not concerned, male, 53.9 percent, female, 50.6 percent, 1966 poll? Do you see that, sir?
A. Yes.
Q. How about this question: "The general public knows all it needs to know about the effects of smoking and health."
This is 1964. Mildly or strongly disagree, do you see that 70 -- about 70 percent of the men and 71 percent of the women say that?
A. I'm sorry. They mildly disagree or strong --
Q. Mildly or strongly disagree that the general public knows all it needs to know about the effects of smoking and health.
A. Is this from the 1966 poll? I'm sorry. Again I think I'm lost here.
Q. No, sir. This is 1964. This table that's up there.
A. So this is a different HEW poll?
Q. No. The polls covered 1964 and 1966. I'm going to show you 1966 in just a minute.

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A. Fine.
Q. All right. 1964?
A. I see it.
Q. Do you see 70 percent of the men and 71 percent of the women mildly or strongly disagreed that the public knew all it needed to know about the effects of smoking and health?
A. That's what the numbers would seem to indicate.
Q. Now, we go to 1966, the same question; right? "The public, general public, knows all it needs to know about the effects of smoking and health."
Mildly or strongly disagree, do you see the men are 71 percent and the women are about 74 percent, mildly or strongly disagree with that?
A. That's what those numbers would indicate.
Q. And that's two years after you indicated in your sworn testimony that the debate was fundamentally over; do you remember we showed that earlier in the cross-examination?
A. The debate?
Q. The debate about smoking and health was fundamentally over?
A. Yes.

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Do these questions relate to the debate? I don't read them that way myself.
Q. In 1964 did you testify that as of 1964 the debate about smoking being harmful was fundamentally over?
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A. Yes.
Q. Do you know who a Senator Earle Clements was of the Tobacco Institute, have you come across his name in your research?
A. Yes.
Q. Do you know that he was the head of Tobacco Institute at one point?
A. I'm not sure that I did.
Q. He was referred to as senator after he left of the senate as a measure of respect to him?
A. That's very normal, yes.
Q. Let's look at Exhibit 5026, which is a letter from the Tiderock Corporation which the record will show was consulting with the Tobacco Institute -- to the Tobacco Institute. November 9, 1967: "As you know, before we ran the Barron's advertisement we were most anxious to establish some kind of benchmark on the attitude of the public. Accordingly, we asked Ted Bates & Company to do make an extensive telephone survey."
So it's a survey being done for the industry in 1967?
A. Yes.
Q. Page three: "The major points of interest in this study are:"
This would be three years after Surgeon General's report: "Heavy smokers and the younger groups of better
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educated are a lot likely inclined to accept the Surgeon General's report, although the great majority are aware of it."
Do you see that in the first paragraph?
A. I notice the awareness statement there, yes.
Q. Down in paragraph three: "Heavy smokers are more interested in having the cigarette manufacturers publicly argue against government interference in their industry. They also tend to be more familiar with the Tobacco Institute."
Were you aware of this survey?
A. Just a second. I didn't get a chance to read the whole thing. I'm sorry.
Q. Were you familiar with this survey, sir?
A. I don't think I was familiar with this particular survey, no.
Q. Did you know, sir, that the Tobacco Institute annually prepared reports and prepared programs for what it was going to do each year?
A. The Tobacco Institute?
Q. Yes.
A. Yes.
Q. You know the Tobacco Institute was the industry's main public relations arm and handled things out of Washington for the industry?
A. Yes. I believe it's a -- it was a trade association.
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Q. Let's look in 1967 at Exhibit 5414, the Tobacco Institute, Inc., public relation program and budget proposals for 1967. And over on page 2 of the document there's a

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reference: "Recent surveys by Louis Harris" --
You understand that to be a polling organization?
A. Yes.
Q. -- "And by the American Newspaper Publisher's Association indicate that the majority of the general public continues to question whether the case against smoking has been proved. This is apparently another credibility gap between government and the public."
Were you aware of that survey, sir, reported to the Tobacco Institute?
A. I would like to see a copy of it if you have it.
Q. I've got the reference in this document. Had you seen it before I showed it to you, sir?
A. This is somebody's commentary on it and I don't know whether it's an accurate reflection of the commentary. If you have the survey, I would surely like to see it.
Q. You mentioned Hill & Knowlton. Do you see that this commentary is by Hill & Knowlton, the consultants to the Tobacco Industry?
A. That doesn't change whether that's an accurate observation or not.
Q. My question to you, sir, had you seen reference to this

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survey before I just showed you it?
A. To that particular survey, no, I hadn't.
Q. Doctor, were you told before you took the stand today that the parties have an agreement in this case, called a stipulation, that the Tobacco Institute received over six hundred million dollars from the Tobacco Industry to do its work?
A. Was I told that?
Q. Yes.
A. No.
Q. Let's move up to 1968. I want to show you Exhibit 10792, October 28, 1968, Philip Morris, major tobacco company executive says that: "Care, cooperation and confidence will provide acceptable answers to smoking and health controversy."
It speaks about James bowling. Have you seen Mr. Bowling's name in documents as vice president of Philip Morris?
A. I see that's a press release. But did that go out to the public? Was it printed anywhere? I don't know Mr. Bowling.
Q. Have you checked the Tobacco Institute and the industry's tracking reports to see where they sent their press releases?
A. I don't know whether that ever appeared in public.
Q. Have you checked the tracking reports?
A. I've seen some, yes.
Q. Have you seen Philip Morris's tracking reports?

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A. On Philip Morris? I thought you asked me about the Tobacco Institute.
Q. Let's start with the Tobacco Institute. Have you seen those?
A. Yes. I have seen some from the Tobacco Institute.
Q. All right.
Look at this statement by Mr. Bowling: "I believe that the Tobacco Industry is in a very strong position. We have the confidence of an overwhelming number of Americans and of people throughout the world."
Were you aware, sir, in 1967 Philip Morris stated that it had -- 1968, Philip Morris stated that it had the

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confidence of an overwhelming number of Americans?
A. I guess that was that gentleman's opinion.
Q. And that gentleman was a vice president of Philip Morris in 1968, according to the document, correct?
A. That's what it showed, yes.
MR. WESTBROOK: Your Honor, I'm at a stopping point.
THE COURT: I'm sorry. I'll have to bring you back tomorrow.
THE WITNESS: Yes, your Honor.
THE COURT: All right. 10:00 o'clock tomorrow. Good night, everyone.
(Jury excused.)
THE COURT: I'm too tired to work on the charge
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page 5002
tonight. I really need a very fresh start. We'll try at 9:00 o'clock tomorrow, shall we?
MR. BERNICK: I don't know if the court wants to hear a response from us on the letter that was sent to you this morning from the plaintiffs dealing with some of the legal issues. You made reference to it this morning.
THE COURT: I thought, as I told you this morning, that we ought to forge on ahead and get a complete copy of the charge without going back and then when we get that complete copy we will have focused on a relatively small number of matters that we can more quickly deal with.
MR. BERNICK: We'll then, in due course, probably tomorrow, submit a short letter response if that's all right with the court.
THE COURT: Yes.
MR. BERNICK: Would you have the energy to take up two last deposition issues?
THE COURT: Of course.
MR. BERNICK: That would be useful to get out of the way.
These relate to Mr. Austern's deposition.
I think these are the last two issues. I flagged the pages that I will have reference to, your Honor.
THE COURT: Thank you.
MR. BERNICK: At page 96 of the first one, line 23
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through page 97. It's a discovery deposition and at a certain point I basically asked him a very open-ended question which of course he gave me a very long self-serving answer. They had Mr. Austern on the stand. If they wanted Mr. Austern to tell his side of the story they had an opportunity to do it.
We would object to their designating in our designation process in our case this long self-serving response.
THE COURT: I don't want this: Why don't you just give me a list of the facts.
No.
MR. BERNICK: From page 96 line 23 through page 97.
THE COURT: All of 97?
MR. BERNICK: Yes. All of 97.
THE COURT: All right. I'll strike it.
Then there's line one on 98. Yes, stricken.
MR. BERNICK: The next volume, page 293 and 294 is an answer where basically Mr. Austern indicates that their future course of conduct may depend upon the outcome of the present litigation. I don't think it's appropriate for the jury to be asked to speculate about the outcome.

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THE COURT: No. 293 line 12 to 294 line 2 are out.
What about 296?
MR. BERNICK: 296 is basically the same kind of thing.

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THE COURT: 296 line 14 to 297 line 2 are out.
MR. BERNICK: That's fine. Thank you, your Honor.
MR. MANSFIELD: Your Honor, we would move to strike Exhibit 76050.921. This was a Kent advertisement precisely during the period of time your Honor had ruled that there would be no reference to Kent. I don't know if it was inadvertence.
MR. WESTBROOK: There was no reference to asbestos being in the filter and we took that out. There was no prohibition on talking about Kent.
MR. MANSFIELD: Between the years of 1952 to 1956 your Honor precluded references to Kent in this trial. It was the subsequent Kent ad in 65. I'm not protesting that. I think it's improper in light of the court's ruling.
THE COURT: I don't understand why it's improper. I don't remember making such a ruling.
MR. MANSFIELD: During the period of 1952 and 1956 is when Kent had the asbestos in the filter. We talked about whether there should be references to Kent during that period of time.
THE COURT: Just to the filter.
MR. MANSFIELD: That's why he had to redact material.
THE COURT: So what?
MR. MANSFIELD: Your Honor had made the ruling. Our request is that it be stricken.

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THE COURT: I didn't make such a ruling with that in mind. Motion is denied.
Anything further tonight?
I'll see you all at nine tomorrow. Good night everyone. Have a pleasant evening.
(Case adjourned to Tuesday, January 9, 2001 at 9:00 a.m.)

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J A M E S K I R B Y M A R T I N
DIRECT EXAMINATION (Continued) 4791
CROSS EXAMINATION 4902

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Court Exhibits

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Defendant Exhibits

Viscusi 1, Viscusi 2, Viscusi 3, Viscusi 4, Viscui 5, Viscusi 6, Viscusi 7, Viscusi 9, Viscusi 12, Viscusi 14, Viscusi 15, Viscusi 16, Viscusi 17, Viscusi 18, Viscusi 19, Viscusi 20, Viscusi 21, Viscusi 22, Viscusi 23, Viscusi 24, Viscusi 26, Viscusi 27, Viscusi 28, Viscusi 29, Viscusi 30, Viscusi 31, Viscusi 32, Viscusi 33, WS-002262, ARF-001716, WS-003897, GZ-201265, ARF-001123, WZ-001534, WZ-001533, WS-002331, WZ-001535, WS-001609, WZ-001556 4769

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